

INSTRUCTION No. \_\_\_\_\_

OUJI-CR 1A

INSTRUCTION No. \_\_\_\_\_

For those who have been summoned as jurors, I remind you that jury service is a legal obligation as well as a civic duty. Each of you is an officer of the court just as the judge, the **attorney(s)** representing the prosecution, and the **attorney(s)** representing the defense. Your office as juror is one of extreme public trust. The services you perform as juror are as important and essential to the administration of justice as those performed by the judge and the attorneys.

As prospective jurors you will take an oath to answer completely and truthfully all questions asked you by myself and the attorneys.

OUII-CR 1-1

INSTRUCTION No. \_\_\_\_\_

Do you, and each of you, solemnly **swear/affirm** to well and truly answer questions asked of you concerning your qualifications to sit as jurors in the case now on trial, **(so help you God?)/(this you do affirm under the penalties of perjury)?**

OUJI-CR 1-2

INSTRUCTION No. \_\_\_\_\_

The **defendant(s) is/are** charged with the **crime(s)** of **[Name the Crime(s)]**, committed against **[Name the Alleged Victim(s)]**.

OUJI-CR 1-3



Both the State of Oklahoma and the **defendant(s)** are entitled to jurors who approach this case with open minds and agree to keep their minds open until a verdict is reached. Jurors must be as free as humanly possible from bias, prejudice, or sympathy. Jurors must not be influenced by preconceived ideas as to the facts or as to the law.

From this point until the conclusion of this trial, do not discuss this case with any other person, including family and friends. You should not read or listen to any media discussing this case nor research this case in any way, including through the internet or any other tools of technology. Nor should you use any of these means to communicate to others about the case. It is important that this case be decided solely on the evidence you receive in this courtroom.

You are undoubtedly qualified to serve as a juror but you may not be qualified to serve as a juror in this particular case. Hence, the law permits unlimited challenges for cause. Moreover, the law grants both the State and the **defendant(s)** 3/5/9 peremptory challenges. A peremptory challenge permits either the State or the defendant to excuse a prospective juror for any reason allowed by law. If you are excused from being a juror in this particular case, it is no reflection on you. You will may be chosen to serve as a juror in another case.

OUII-CR 1-4  
(2013 Supp.)

I will now ask you a number of questions to determine your qualifications to serve as jurors in this case. To determine your qualifications I will need to obtain information from each of you, including some personal information. The purpose of these questions is to obtain a fair jury and it is not to embarrass you. If any of my questions should touch on sensitive subjects that you do not want to have heard by everyone present, you should tell me, and you can then come forward so that we can discuss those matters privately.

1. Do you reside in **[Name of County]** County?
2. The **attorney(s)** for the State **is/are** **[Name the Attorney(s)]**. Do any of you know the **attorney(s)** for the State? Has the District Attorney's office handled any matter for any of you?
3. The **attorney(s)** for the **defendant(s)** **is/are** **[Name the Attorney(s)]**. Do any of you know the **attorney(s)** for the **defendant(s)**? **Has/Have** the **attorney(s)** for the **defendant(s)** **[or his/her law firm]** represented you on any legal matter?
4. The **defendant(s)** in this case **is/are** **[Name the Defendant(s)]**. Do any of you know the **defendant(s)**?
5. **Do/Did** any of you know **[Name the Alleged Victim(s)]**, or any member of **his/her/their** family?
6. The witnesses who may be called in this case are **[Name the Witness(es)]**: Do any of you know any of the witnesses, or any member of their families?
7. Have any of you read or heard the alleged facts of this case? Have you expressed or formed an opinion concerning this case? Would any information you have read or heard concerning this case influence your ability to hear or decide this case impartially? Have you discussed this case with anyone prior to today?
8. Have any of you had any experience that you feel might affect your consideration of this case?
9. Are you or any of your friends or relatives employed or involved with a law enforcement agency or organization? Have you or any of your friends or relatives been connected with law enforcement in the past? Do you hold or have you held a "Reserve Deputy Commission," a "Special Deputy Commission," or an "Honorary Deputy Commission"?
10. Have any of you ever been charged with or accused of a crime? Have any of your friends or relatives ever been charged with or accused of a crime?
11. Have any of you ever been victims of a crime? Have any of your friends or relatives ever been victims of a crime?
12. I will instruct you on the law and the rules by which the jury reaches a verdict. Your duty as jurors is to accept and follow the law as included in the instructions and rules given to you by me. If selected as a juror, will each of you accept and follow the law as included in the instructions and rules that I will give to you?

One instruction I will give is that **the/each** defendant is presumed innocent of the crime charged, and the presumption continues unless after consideration of all the evidence you are convinced of **his/her/(each defendant's)** guilt beyond a reasonable doubt. The State has the burden of presenting the evidence that establishes the guilt of **the/each** defendant beyond a reasonable doubt. **The/Each** defendant must be found not guilty unless the State produces evidence which convinces you beyond a reasonable doubt of each element of the crime. If selected as a juror, will each of you presume **the/each** defendant innocent unless proven guilty beyond a reasonable doubt?

**[Select either Alternate 1 (No Death Penalty) or Alternate 2 (Death Penalty)].**

**Alternate 1 (No Death Penalty)**

Another instruction I will give is that as jurors, if you find the **defendant(s)** guilty, you will have the duty to assess punishment.

The punishment for the crime of [Name the Crime Charged] is a possible maximum punishment of (a term in the State Penitentiary for [possible maximum years in Penitentiary])/(a term in the County Jail for [possible maximum jail term]) and/or [a fine of (possible maximum fine)].

If selected as a juror and you find the defendant(s) guilty, will each of you assess punishment in accordance with the law?

### **Alternate 2 (Death Penalty)**

The defendant is charged with murder in the first degree. It will be the duty of the jury to determine whether the defendant is guilty or not guilty after considering the evidence and instructions of law presented in court.

If the jury finds beyond a reasonable doubt that the defendant is guilty of murder in the first degree, the jury will then have the duty to assess punishment. The punishment for murder in the first degree is death, imprisonment for life without parole or imprisonment for life.

You may not consider imposing the death penalty unless you find that one or more aggravating circumstances exist beyond a reasonable doubt. Aggravating circumstances are those which increase the defendant's guilt or enormity of the offense. You also may not consider imposing the death penalty unless you unanimously find that the aggravating circumstance or circumstances outweigh any mitigating circumstances which may be present. Mitigating circumstances are 1) circumstances that may extenuate or reduce the degree of moral culpability or blame, or 2) circumstances which in fairness, sympathy or mercy may lead you as jurors individually or collectively to decide against imposing the death penalty. Even if you find that the aggravating circumstance(s) outweigh(s) the mitigating circumstance(s), you may impose a sentence of imprisonment for life with the possibility of parole or imprisonment for life without the possibility of parole.

If you find the defendant guilty of murder in the first degree, can you consider all three of these legal punishments--death, imprisonment for life without parole or imprisonment for life--and weigh the aggravating circumstance(s) against the mitigating circumstances to impose the punishment warranted by the law and evidence?

If you found beyond a reasonable doubt that the defendant was guilty of murder in the first degree and if under the evidence, facts and circumstances of the case the law would permit you to consider a sentence of **death/(imprisonment for life without parole)/(imprisonment for life)**, are your reservations about the penalty of **death/(imprisonment for life without parole)/ (imprisonment for life)** so strong that regardless of the law, the facts and circumstances of the case, you would not consider the imposition of the penalty of **death/(imprisonment for life without parole)/(imprisonment for life)**?

**[Required To Be Asked In All Death Penalty Cases]** - If you find beyond a reasonable doubt that the defendant is guilty of murder in the first degree, will you automatically impose the penalty of death?

13. Having been asked these questions, do any of you know at this time any reason why you could not be a fair and impartial juror? If so please raise your hand.

14. The court now requests that each of you give your name, your spouse's name if you are married, your occupation, your spouse's occupation, and the number of children you have. Please speak slowly and clearly. Let us begin with [Note: Indicate the juror who is to begin.]

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(2008 Supp.)

INSTRUCTION No. \_\_\_\_\_

The attorneys for the State and the **defendant(s)** will now ask you questions. The questions are not designed to pry into your personal affairs but to discover if you have any information or opinions concerning this case which you cannot lay aside, or personal experiences in your life which might cause you to favor or disfavor the State or the defendant or persons who may be witnesses. The questions may further be designed to ascertain your attitude on social, religious and moral issues. These questions are necessary to assure the State and the **defendant(s)** an impartial jury.

The attorney for the State will proceed first.

OUII-CR 1-6

INSTRUCTION No. \_\_\_\_\_

OUJI-CR 1B  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

Do you, and each of you, solemnly **swear/affirm** that you will well and truly try the issues submitted to you in the case now on trial and reach a true verdict, according to the law and evidence presented to you, **(so help you God?)/(this you do affirm under the penalties of perjury)?**

OUJI-CR 1-7  
(2000 Supp.)

You have been selected and sworn as the jury to try the case of the State of Oklahoma against [**Name the Defendant(s)**]. The **defendant(s) is/are** charged with the **crime(s)** of [**Name the Crime Charged**] by an **information/indictment** filed by the State.

The **information/indictment** in this case is the formal method of accusing the **defendant(s)** of [**a**] **crime(s)**. The information/indictment is not evidence and the law is that you should not allow yourselves to be influenced against the **defendant(s)** by reason of the filing of the **information/indictment**.

The **defendant(s) has/have** pled not guilty. A plea of not guilty puts in issue each element of the crime with which the **defendant(s) is/are** charged. A plea of not guilty requires the State to prove each element of the crime beyond a reasonable doubt.

The **defendant(s) is/are** presumed innocent of the **crime(s)** and the presumption continues unless after consideration of all the evidence you are convinced of **his/her** guilt beyond a reasonable doubt. The State has the burden of presenting the evidence that establishes guilt beyond a reasonable doubt. The defendant must be found not guilty unless the State produces evidence which convinces you beyond a reasonable doubt of each element of the **crime(s)**.

Evidence is the testimony received from the **witness(es)** under oath, agreements as to fact made by the attorneys, and the exhibits admitted into evidence during the trial.

It is your responsibility as jurors to determine the facts from the evidence, to follow the law as stated in the instructions from the judge, and to reach a verdict of not guilty or guilty based upon the evidence [and to determine punishment if you should find the **defendant(s)** guilty].

OUII-CR 1-8  
(2013 Supp.)

It is your responsibility as jurors to determine the credibility of each witness and the weight to be given the testimony of the witness. In order to make this determination, you may properly consider the overall reaction of the witness while testifying; the frankness or lack of frankness of the witness; the interest and bias, if any, of the witness; the means and opportunity the witness had to know the facts about which the witness testifies; and the reasonableness or unreasonableness of the testimony in light of all the evidence in the case. You are not required to believe the testimony of any witness simply because the witness is under oath. You may believe or disbelieve all or part of the testimony of any witness. It is your duty to determine what testimony is worthy of belief and what testimony is not worthy of belief.

It is my responsibility as the judge to insure the evidence is presented according to the law, to instruct you as to the law, and to rule on objections raised by the attorneys. No statement or ruling by me is intended to indicate any opinion concerning the facts or evidence.

It is the responsibility of the attorneys to present evidence, to examine and cross-examine witnesses, and to argue the evidence. No statement or argument of the attorneys is evidence.

From time to time during the trial, the attorneys may raise objections. When an objection is made, you should not speculate on the reason why it is made. When an objection is approved or sustained by me, you should not speculate on what might have occurred or what might have been said had the objection not been sustained.

Throughout the trial you should remain alert and attentive. Do not form or express an opinion on the case until it is submitted to you for your decision. Do not discuss this case among yourselves until that time. Do not tell anybody about the case, discuss this case with anyone else, or permit anyone else to discuss this case in your presence. This includes either in person or by electronic, telephonic or any other means. Do not talk to the attorneys, the **defendant(s)**, or the **witness(es)**. If anyone should attempt to discuss this case with you, report the incident to me or to the bailiff immediately. This case must be decided solely upon the evidence presented to you in this courtroom, free from any outside influence. This means that during the trial you must not conduct any independent research about the case, the matters in the case, the individuals, witnesses, attorneys, or organizations in the case. In other words, you should not consult dictionaries or reference materials, search the internet, websites, blogs, or use any other electronic tools to obtain information about the case or to help you decide the case. Do not read newspaper reports or obtain information from any other source about this trial or the issues, parties, or witnesses involved in this case, and do not watch or listen to television or radio reports about it. Do not attempt to visit the scene or investigate this case on your own.

While court is in session, please power off or place in airplane mode, all electronic devices. These devices include, but are not limited to, cell phones, Apple Watches, Garmin, or other personal electronics worn on your person. This will allow you to concentrate on the evidence without interruption. If you are required to use your device for medical reasons, please inform the court clerk. You may keep your cell phone or other devices with you until deliberation begins.

At this point in the trial, the attorney for the State reads the information/indictment, the plea of the **defendant(s)**, and gives an opening statement. The attorney for the **defendant(s)** may give an opening statement after the attorney for the State, or may elect to reserve **his/her** opening statement until the conclusion of the evidence by the State. Opening statements are not evidence but serve as guides so that you may better understand and evaluate the evidence when it is presented.

Following the opening statements, witnesses are called to testify. Witnesses are sworn and then examined and cross-examined by the attorneys. Exhibits may also be introduced into evidence.

After the evidence is completed, I will instruct you on the law applicable to the case. The attorneys are then permitted closing arguments. Closing arguments are not evidence and are permitted for purposes of persuasion only.

When closing arguments are completed, the case will be submitted to you. You will then retire to consider your verdict.

The attorney for the State may now proceed.





INSTRUCTION No. \_\_\_\_\_

You may take notes during the presentation of evidence in this case. In that regard remember this:

1. Notetaking is permitted but is not required.
2. Take notes sparingly. Do not try to write down all the testimony. Your notes will only be used for the purpose of refreshing your memory. They are helpful when dealing with measurements, times, distances, identities and relationships.
3. Be brief in your notetaking. It is for you to determine the credibility of the witnesses, and to do so you must observe them. Do not let notetaking distract you from this duty.
4. Your notes are for your private use only. Do not share your notes with any other juror during the presentation of the case. You may discuss the contents of your notes only after all sides have rested and you have commenced your deliberations.

This Instruction is recommended **IF** the court permits jurors to take notes.

OUJI-CR 1-9  
(2000 Supp.)

THE STATE OF OKLAHOMA,  
Plaintiff,

Vs.

JOHN DOE,  
Defendant.

Each prospective juror must complete and sign this standard juror questionnaire and any supplemental questionnaire provided by the court. This questionnaire and any supplemental questionnaire shall be confidential and will be used by the judge and the attorneys to aid them in selecting the jury in this case. If you do not understand a question, please indicate. If you do not have enough room to give adequate explanation to your answer, please use the space in question 27 for additional information. If there is any question that you would rather discuss with the judge and attorneys privately outside the presence of the other jurors, please mark the question with an asterisk ( \* ).

1. Name: \_\_\_\_\_  
(Last) (First) (Middle Initial)

2. Sex: ( ) Male ( ) Female

3. Marital Status: ( ) Married ( ) Never Married ( ) Separated ( ) Divorced ( ) Widowed

4. Date of Birth: \_\_\_\_\_

5. Place of Birth: \_\_\_\_\_

6. Length of Residency in Oklahoma (years): \_\_\_\_\_

7. What County Do You Live In? \_\_\_\_\_

8. List Other Places (City and State) You Have Lived \_\_\_\_\_

9. What Is Your Occupation? \_\_\_\_\_  
(If retired or unemployed, write retired or unemployed and give your previous occupation.)

10. If You Are Currently Employed Outside the Home, Please Provide:

Name of Employer \_\_\_\_\_

Job Title \_\_\_\_\_

Length of Time Worked There \_\_\_\_\_

11. List Other Types of Jobs You Have Held as an Adult \_\_\_\_\_

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12. Educational Background: \_\_\_\_\_

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13. If You Attended College or Vocational School, Specify Your Major Areas of Study and Any Degrees or Certificates You Earned and Whether You Have Taken Any Course in Law: \_\_\_\_\_

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14. If You Have Had Military Experience, State Your Highest Rank, Branch of Service, Length of Service, and Specify Whether Service Was Reserve or Active Duty: \_\_\_\_\_

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15. List the Organizations That You Belong to or Participate In, and the Offices, If Any, That You Hold in These Organizations: \_\_\_\_\_

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16. If You Are Married, State Spouse's Full Name, Occupation and Employer

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17. If You Have Any Children or Step Children, Please Provide the Following Information:

Child # 1: Sex \_\_\_\_\_ Age \_\_\_\_\_ Occupation \_\_\_\_\_

Child # 2: Sex \_\_\_\_\_ Age \_\_\_\_\_ Occupation \_\_\_\_\_

Child # 3: Sex \_\_\_\_\_ Age \_\_\_\_\_ Occupation \_\_\_\_\_

Child # 4: Sex \_\_\_\_\_ Age \_\_\_\_\_ Occupation \_\_\_\_\_

18. Have You Ever Served as a Juror? ( ) Yes ( ) No

If Yes, Please Provide the Following Information:

Year	Court/ Location	Type of Case	Were You the Foreperson?
_____	_____	_____	( ) Yes ( ) No
_____	_____	_____	( ) Yes ( ) No

19. Have You Ever Appeared as a Witness in Any Court Proceeding, Either Civil, Criminal or Military? ( ) Yes ( ) No

If Yes, What Were the Circumstances? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

20. Have You, Any Member of Your Immediate Family, or Any Close Friend Been a Defendant in a Criminal or Military Court Martial Case? ( ) Yes ( ) No

If Yes, Who and Relationship to You: \_\_\_\_\_

Type of Crime Accused of Committing? \_\_\_\_\_

Was There a Conviction? ( ) Yes ( ) No

21. Have You, Any Member of Your Immediate Family, or Any Close Friend Been the Victim of a Crime? ( ) Yes ( ) No

If Yes, Who Was the Victim? \_\_\_\_\_

What Was the Crime? \_\_\_\_\_

When Did it Occur? \_\_\_\_\_

Was an Arrest Made? ( ) Yes ( ) No

22. Have You, Any Family Member, or Any Close Friend Ever Been an Employee of or Volunteer for Any Federal, State or Local Law Enforcement Agency or Ever Worked in a Jail, Prison or Detention Center? ( ) Yes ( ) No

If Yes, State Each Person's Name and Relationship to You: \_\_\_\_\_

Position Held \_\_\_\_\_

Agency \_\_\_\_\_

Dates of Employment \_\_\_\_\_

23. Have You, Any Family Member, or Any Close Friend Ever Worked for a District Attorney or Other Prosecuting Attorney's Office? ( ) Yes ( ) No

If Yes, State Each Person's Name and Relationship to You: \_\_\_\_\_

Position Held \_\_\_\_\_

Name of Attorney and Office \_\_\_\_\_

Dates of Employment \_\_\_\_\_

24. Have You, Any Family Member, or Any Close Friend Ever Worked for Any Other Attorney or Law Office? ( ) Yes ( ) No

If Yes, State Each Person's Name and Relationship to You: \_\_\_\_\_

Position Held \_\_\_\_\_

Name of Attorney and Office \_\_\_\_\_

Dates of Employment \_\_\_\_\_

25. Are You Presently Taking Medicine or Have Any Hearing or Other Health Issues Which May Affect Your Ability to Serve as a Juror? ( ) Yes ( ) No

If Yes, Please Explain \_\_\_\_\_

\_\_\_\_\_

26. Is There Any Reason You Could Not Serve as a Juror? ( ) Yes ( ) No

If Yes, Please Explain \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

27. Use this Space for Any Additional Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I affirm that the foregoing is true and correct to the best of my knowledge and belief.

\_\_\_\_\_  
(Date and Place)

\_\_\_\_\_  
(Signature)

In its discretion, the trial court may direct the use of this juror questionnaire as well as supplemental questionnaires as a supplement to, rather than a substitute for, voir dire. If used, juror questionnaires should be distributed to the members of the jury pool before the commencement of voir dire, and adequate time for the court and attorneys to review the jurors' responses should be allowed before voir dire begins.

Juror questionnaires should be kept confidential, and copies of them should be made available only for use during voir dire to the attorneys for the prosecution and defense, and to the trial court, except as needed for appellate review. Juror questionnaires should not be made a part of the public record. After the jury has been impaneled, the original questionnaires of all impaneled or questioned jurors should be retained pursuant to Okla. Ct. of Crim. App. R. \_\_\_\_ until all appeals have been concluded. All copies of juror questionnaires should be destroyed at the conclusion of the voir dire, and the originals of all questionnaires for jurors who were not questioned during voir dire should be destroyed at the conclusion of the jurors' service, unless the court orders otherwise for good cause shown. See Okla. Ct. of Crim. App. R. \_\_\_\_.

In *Cohee v. State*, 1997 OK CR 30, Attachment 1, 942 P.2d 211, 213-14, the Court of Criminal Appeals adopted the following Guideline for use in criminal proceedings:

Guideline 3. Jury Questionnaires; Confidentiality.

The trial court may, upon request of the parties and at its discretion, allow a written juror questionnaire to be sent to members of the jury pool before voir dire commences, and may allow the results of that questionnaire to be used in voir dire. The trial court must examine and approve the questions contained in the questionnaire. The court shall keep all jurors' home and business telephone numbers confidential unless good cause is shown to the

court which would require such disclosure.

Since the *Cohee* decision, Oklahoma trial courts have used juror questionnaires in a number of criminal cases, and this juror questionnaire form is provided to offer further guidance in the use of juror questionnaires. A number of benefits from the use of juror questionnaires have been identified. Juror questionnaires may shorten the time required for voir dire; however, this benefit will not be realized unless counsels refrain from rehashing the information from the questionnaires during voir dire. Another benefit is that juror questionnaires may enable the court and counsel to weed out jurors who could not serve in a case before voir dire begins, and thereby accelerate the process of sending these prospective jurors to a different case. Juror questionnaires may also highlight particular areas (such as prior employment with law enforcement) for more focused inquiry during voir dire. The use of juror questionnaires provides jurors more time to think about their answers and provide more complete responses than voir dire. In addition, since jurors cannot hear the responses of other jurors when they are filling out questionnaires on their own, juror questionnaires can elicit the jurors' own opinions without the influence of the responses by other jurors. Jurors may also be more likely to reveal socially unacceptable attitudes, such as racial prejudice or sexism, in juror questionnaires. Similarly, jurors may be more apt to disclose private or embarrassing information (such as a prior criminal record) in a juror questionnaire than in open court. See Gregory P. Joseph, *American Bar Association Principles for Juries & Jury Trials*, SL044 ALI-ABA 653, 730 (2005); Lin S. Lilley, *Let Jurors Speak the Truth, In Writing*, 41 TRIAL 64 (July. 2005); Valerie Hans & Alyana Jehle, *Avoid Bald Men and People with Green Socks? Other Ways to Improve the Voir Dire Process*, 78 CHI-KENT L. REV. 1179, 1198 (2003).

The American Bar Association has endorsed the use of juror questionnaires. In February, 2005, the ABA House of Delegates approved 19 Principles for Juries and Jury Trials. Principle 11 states: "Courts should ensure that the process used to empanel jurors effectively serves the goal of assembling a fair and impartial jury." Paragraph A under Principle 11 provides:

Before voir dire begins, the court and parties, through the use of appropriate questionnaires, should be provided with data pertinent to the eligibility of jurors and to matters ordinarily raised in voir dire, including such background information as is provided by prospective jurors in their responses to the questions appended to the notification and summons considered in Standard 10 D. 1.

1. In appropriate cases, the court should consider using a specialized questionnaire addressing particular issues that may arise. The court should permit the parties to submit a proposed juror questionnaire. The parties should be required to confer on the form and content of the questionnaire. If the parties cannot agree, each party should be afforded the opportunity to submit a proposed questionnaire and to comment upon any proposal submitted by another party.
2. Jurors should be advised of the purpose of any questionnaire, how it will be used and who will have access to the information.
3. All completed questionnaires should be provided to the parties in sufficient time before the start of voir dire to enable the parties to adequately review them before the start of that examination.

American Bar Association, *PRINCIPLES FOR JURIES AND JURY TRIALS* 13 (2005). In addition, New Mexico, New York, and Pennsylvania have adopted uniform juror questionnaires for criminal cases. N.M.R.A. Crim. UJI 14-110; N.Y. Ct. R., App. E; Pa. St. R. Crim. P. 632(A)(1) ("Each prospective juror shall complete and verify the standard, confidential juror information questionnaire required by paragraph (H) of this rule, and any supplemental questionnaire provided by the court.").

While juror questionnaires may provide a number of benefits to the jury selection process, there have been concerns raised about juror privacy. Mary R. Rose, *Juror's Views of Voir Dire Questions*, 85 JUDICATURE 10 (2001); Paula L. Hannaford, *Safeguarding Juror Privacy: A New Framework for Court Policies and Procedures*, 85 JUDICATURE 18 (2001). Juror questionnaires pose a different threat to juror privacy than voir dire in open court, because juror questionnaires are written records. A concern for juror privacy is reflected in the ABA's Principles for Juries and Jury Trials in Principle 7, which states: "Courts should protect juror privacy insofar as consistent with the requirements of justice and the public interest." Both New York and Pennsylvania address concerns for juror privacy by providing for destruction of juror questionnaires at

the conclusion of the case. N.Y. Ct. R., App. E, ¶ A(1) ("Upon completion of jury selection, or upon removal of a prospective juror, the questionnaires shall be either returned to the respective jurors or collected and discarded by court staff in a manner that ensures juror privacy."); Pa. St. R. Crim. P. 632 (F), (G). Similarly, the Oklahoma Court of Criminal Appeals has provided for destruction of juror certain questionnaires upon completion of the juror's service. Okla. Ct. Crim. App. R. \_\_\_\_.

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OUJI-CR 1-10



The Sixth Amendment to the United States Constitution guarantees that a person charged with a crime has the right to the assistance of counsel. This Constitutional guarantee also provides that an individual charged with a crime has the right to waive representation by legal counsel, and proceed to trial representing **himself/herself**, and act as **his/her** own attorney. The defendant has elected to waive **his/her** right to counsel and represent **himself/herself** in this matter. You are not to let the fact that **[Name of Defendant]** has elected to represent **himself/herself** influence your decision in this case. Instead, you must decide this case based upon the law in the court's instructions and the evidence received during the course of the trial.

**[Name of Standby Counsel]** has been appointed as standby counsel to the defendant but not to act as **his/her** attorney in this case. The role of standby counsel is limited to answering **[Name of Defendant]**'s questions and providing other assistance but standby counsel will not be participating directly in the trial. In electing to represent **himself/herself**, the defendant has assumed the full responsibility of acting as **his/her** own attorney in this case and will be held to the same standards and requirements of an actual practicing attorney. Standby counsel will be available to answer **[Name of Defendant]**'s questions during the course of the trial but the defendant will solely make all of the decisions concerning **his/her** defense.

The trial court should give the second paragraph if it has appointed a standby counsel for the defendant.

The Oklahoma Court of Criminal Appeals emphasized in *Brown v. State*, 2018 OK CR 3, ¶ 48, 422 P.3d 155, 166, that "the trial court must ensure that a defendant choosing self-representation understands his rights, not only in the guilt/innocence process, but also in the sentencing process."

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OUJI-CR 1-11  
(2019 Supp.)

INSTRUCTION No. \_\_\_\_\_

The **defendant(s) is/are** charged with being **[an] accessory(ies)** to the crime of **[Underlying Felony]** on **[Date]** in **[Name of County]** County, Oklahoma.

OUII-CR 2-1

No person may be convicted of being an accessory to the felony of **[Underlying Felony]** unless the State has proved beyond a reasonable doubt each element of the crime of accessory. These elements are:

First, actively **conceals/aids** the offender;

Second, after commission of the felony of **[Underlying Felony]**;

Third, such **concealing/aiding** must be performed with knowledge that the offender has committed the acts which constitute the felony of **[Underlying Felony]**;

Fourth, such **concealing/aiding** must be performed with the intent that the offender **avoid/(escape from) arrest/trial/conviction/punishment**.

OUJI-CR 2-2

INSTRUCTION No. \_\_\_\_\_

The elements of the **[Underlying Felony]** to which the **defendant(s) is/are** allegedly **[an] accessory(ies)** are as follows:

OUII-CR 2-3

Aid - Render overt personal assistance.

References: Wilson v. State, 552 P.2d 1404 (Okl. Cr. 1976); Farmer v. State, 56 Okl. Cr. 380, 40 P.2d 693 (1935).

Conceal - Hide or secrete to prevent discovery.

References: Brewer v. State, 554 P.2d 18 (Okl. Cr. 1976); Black's Law Dictionary 261 (5th ed. 1979).

Knowledge - Personal awareness of the facts.

Reference: 21 O.S. 1991, § 96.

OUJI-CR 2-4

INSTRUCTION No. \_\_\_\_\_

All persons concerned in the commission of a crime are regarded by the law as principals and are equally guilty thereof. A person concerned in the commission of a crime as a principal is one who **(directly and actively commits the act(s) constituting the offense)/(knowingly and with criminal intent aids and abets in the commission of the offense)/(whether present or not, advises and encourages the commission of the offense).**

OUII-CR 2-5  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

Merely standing by, even if standing by with knowledge concerning the commission of a crime, does not make a person a principal to a crime. Mere presence at the scene of a crime, without participation, does not make a person a principal to a crime.

One who does not actively commit the offense, but who aids, promotes, or encourages the commission of a crime by another person, either by act or counsel or both, is deemed to be a principal to the crime if **he/she** knowingly did what **he/she** did either with criminal intent or with knowledge of the other person's intent. To aid or abet another in the commission of a crime implies a consciousness of guilt in instigating, encouraging, promoting, or aiding in the commission of that criminal offense.

OUII-CR 2-6  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

It is a defense to the charge of aiding and abetting that a person abandoned the commission of the alleged crime. However, the responsibility of one who has aided and abetted in the commission of a crime, or engaged in a criminal undertaking, does not cease unless, within time to prevent the commission of the contemplated act, **he/she** has done everything practicable to prevent its consummation. It is not enough that **he/she** may have changed **his/her** mind, and tried when too late to avoid responsibility. **He/she** will be liable if **he/she** fails within time to let the other **party/parties** know of **his/her** withdrawal, and unless **he/she** does everything in **his/her** power to prevent the commission of the crime.

OUII-CR 2-7  
(2000 Supp.)



INSTRUCTION No. \_\_\_\_\_

It is the burden of the State to prove beyond a reasonable doubt that the **defendant(s)** did not abandon **his/her/their** commission of the crime charged. If you find that the State has failed to sustain that burden, the **defendant(s)** must be found not guilty.

OUJI-CR 2-8  
(2000 Supp.)

Criminal Intent - Design to commit a crime or to commit acts the probable consequences of which are criminal.

OUJI-CR 2-9  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

The **defendant(s) is/are** charged with attempt to commit the crime of **[Underlying Felony]** on **[Date]** in **[Name of County]** County, Oklahoma.

OUII-CR 2-10  
(2000 Supp.)

No person may be convicted of an attempt to commit the crime of **[Underlying Felony]** unless the State has proved beyond a reasonable doubt each element of the attempt. These elements are:

First, the **defendant(s)** formed the specific intent to commit the crime of **[Underlying Felony]**;

Second, the defendant(s)

**Note – Give One or More of the Following Alternatives:**

- Performed a perpetrating act or acts toward committing the crime of **[Underlying Felony]** but **(such act(s) failed to constitute the commission of)/(defendant(s) was/were prevented from committing)/(defendant(s) was/were intercepted in the perpetration of)** that crime.
- Purposely engaged in conduct which would have constituted the crime if the attendant circumstances were as the **defendant(s)** believed them to be.
- When causing a particular result in an element of the crime, did anything with the purpose of causing or with the belief that it would cause such result, without further conduct on the part of the **defendant(s)**.

OUII-CR 2-11  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

A perpetrating act, for purposes of these instructions, is one that would end in the commission of the crime the **defendant(s)** intended to commit, but for the intervention of circumstances independent of the will of the **defendant(s)**.

The requirement that the **defendant(s)** commit a perpetrating act must be distinguished from mere preparation to commit a crime. Preparation consists of devising or arranging the means or measures necessary for the commission of a crime.

OUII-CR 2-12  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

The elements of the [**Underlying Felony**] that the **defendant(s)** allegedly attempted to commit are as follows:

OUII-CR 2-13

Specific Intent - Deliberate purpose to accomplish the consequences.

References: Carter v. State, 309 P.2d 737 (Okl. Cr. 1957); Vandiver v. State, 97 Okl. Cr. 217, 261 P.2d 617 (1953), overruled on other grounds, Parker v. State, 917 P.2d 980, 986 n.4 (Okl.Cr. 1996); Temple v. State, 71 Okl. Cr. 301, 111 P.2d 524 (1941).

OUJI-CR 2-14

The fact that it would be impossible for the **defendant(s)** to accomplish the intended crime is not a defense to the attempt to commit the crime of **[Underlying Felony]**.

OUII-CR 2-15



The **defendant(s)** is/are charged with conspiracy

**[to commit the crime of (Underlying Felony)]**

**[falsely and maliciously to indict another for any crime]**

**[falsely and maliciously to procure another to be charged or arrested for any crime]**

**[falsely to move or maintain a suit, action, or proceeding]**

**[to cheat and defraud a person of property by means which are in themselves criminal]**

**[to cheat and defraud a person of property by means which, if executed, would amount to a cheat or to obtaining money or property by false pretenses]**

**[to commit an act injurious to the public health, to public morals, or to trade or commerce]**

**[to commit an act for the perversion or obstruction of justice or the due administration of the laws]**

**[to commit an offense against the State of Oklahoma]**

**[to defraud the State of Oklahoma]**

on **[Date]** in **[Name of County]**, Oklahoma.

OUII-CR 2-16

The elements of conspiracy are as follows:

First, an agreement by two or more persons,

Second, to commit **[Crime or Conduct Charged]**,

Third, the defendant(s) (was/were [a] party(ies) to the agreement at the time it was made)/(knowingly became [a] party(ies) to the agreement at some time after it was made),

Fourth, an overt act by one or more of the parties performed subsequent to the formation of the agreement.

OUJI-CR 2-17

INSTRUCTION No. \_\_\_\_\_

An overt act is any act performed by any member of the conspiracy which is done for the purpose of furthering or carrying out the ultimate intent of the agreement, or which would naturally accomplish the object of the conspiracy.

OUJI-CR 2-18

INSTRUCTION No. \_\_\_\_\_

OUJI-CR 2-19

INSTRUCTION No. \_\_\_\_\_

When a conspiracy is entered into to do an unlawful act, the conspirators are responsible for all that is said and done in furtherance of the conspiracy by their co-conspirators. If two or more persons conspire to commit a crime, each is criminally responsible for the acts of **his/her** co-conspirators in furtherance of the conspiracy, or where the connection between the acts and the conspiracy is reasonably apparent.

Therefore, if you find beyond a reasonable doubt that [**Name of Defendant**] was a member of a conspiracy, and that **another/other conspirator(s)** committed the crime of [**Specify Crime**] in furtherance of, or as a foreseeable consequence of, the conspiracy, then you may find [**Name of Defendant**] guilty of [**Specify Crime**], even though [**Name of Defendant**] may not have participated in any of the acts that constitute the crime of [**Specify Crime**].

OUJI-CR 2-19A

INSTRUCTION No. \_\_\_\_\_

It is a defense to the crime of conspiracy that a person who has entered into an agreement to commit a crime withdraws from and abandons the agreement prior to the commission of an overt act by any party to the agreement. A withdrawal is effective only if the person withdrawing notifies all of the other parties to the agreement in a manner sufficient to inform a reasonable person of the withdrawal.

OUII-CR 2-20

INSTRUCTION No. \_\_\_\_\_

It is the burden of the State to prove beyond a reasonable doubt that the **defendant(s)** did not make an effective withdrawal from the agreement. If you find that the State has failed to sustain that burden, then the **defendant(s)** must be found not guilty.

OUJI-CR 2-21

## CONSPIRACY - DEFINITIONS

Conspirator – A "conspirator" is one who enters into an unlawful agreement between two or more persons in order to accomplish some unlawful purpose, or to accomplish some lawful purpose by unlawful means.

Cheat and Defraud - To induce a person to part with possession of property by reason of intentionally false representations, including any tricks, devices, artifices, or deceptions.

Reference: Black's Law Dictionary 215 (5th ed. 1979).

Maliciously - With a wish to vex, annoy, or injure another person.

References: State v. McCray, 1918 OK CR 186, 176 P. 418, 15 Okl. Cr. 316; 21 O.S. 2001, § 95.

Treason - Levying war against the State, or adhering to its enemies, giving them aid and comfort.

Reference: Okla. Const. art. 2, § 16.

Once the defense of withdrawal is properly raised, the burden of proving the nonexistence of the defense should rest on the State. No instructions concerning the defendant's burden to come forward with evidence, or the question whether the defendant has presented sufficient evidence to warrant an instruction, are included because these matters pertain to questions of law and of trial procedure, both of which are beyond the legitimate concern of the jurors.

OUII-CR 2-22  
(2008 Supp.)



No person may be convicted of attempting to perform an act of violence unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, **attempting/conspiring/endeavoring**;

Third, to perform an act of violence;

Fourth, **involving/(intended to involve) (serious bodily harm to)/(the death of)** another person.

---

Statutory Authority: 21 O.S. 2011, § 1378(A).

OUII-CR 2-23  
(2018 Supp.)

No person may be convicted of threatening to perform an act of violence unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, threatening;

Third, to perform an act of violence;

Fourth, **involving/(intended to involve) (serious bodily harm to)/(the death of)** another person.

---

Statutory Authority: 21 O.S. 2011, §§ 1378(B).

OUII-CR 2-24  
(2018 Supp.)

No person may be convicted of planning to cause **(serious bodily harm to)/(the death of)** another person unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, devising a **plan/scheme/program**;

Third, **involving/(intended to involve) (serious bodily harm to)/(the death of)** another person;

Fourth, with the intent to perform a malicious act of violence.

---

Statutory Authority: 21 O.S. 2011, §§ 1378(C).

OUII-CR 2-25  
(2018 Supp.)

INSTRUCTION No. \_\_\_\_\_

The **defendant(s) is/are** charged with bribery of **[Name of Person to Whom Alleged Bribe was Offered or from Whom Solicited]** on **[Date]** in **[Name of County]** County, Oklahoma.

OUII-CR 3-1

No person may be convicted of bribery unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **offering/giving/promising**;

Second, **money/goods/(right in action)/property/(valuable thing)**;

Third, to an executive officer of a governmental unit;

Fourth, known by **defendant(s)** to be an executive officer of a governmental unit;

Fifth, with corrupt intent to influence **his/her** official action.

OUJI-CR 3-2

No person may be convicted of bribery unless the State has proved beyond a reasonable doubt each element of the crime.  
These elements are:

First, **offering/giving/promising**;

Second, **money/goods/(right in action)/property/(valuable thing)**;

Third, to a Legislator;

Fourth, known by **defendant(s)** to be a Legislator;

Fifth, with corrupt intent to influence **his/her** official action.

OUJI-CR 3-3

No person may be convicted of bribery unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, attempting, either directly or indirectly;

Second, to influence the official action;

Third, of a legislator;

Fourth, known by the **defendant(s)** to be a Legislator;

Fifth, by menace, deceit, suppression of truth or any other corrupt means.

OUII-CR 3-4

No person may be convicted of bribery unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **offering/giving/promising**;

Second, **money/goods/(right in action)/property/(valuable thing)**;

Third, to a/n (executive officer of a governmental unit)/(legislative/ judicial/county/municipal/(law enforcement)/public officer)/(public employee);

Fourth, known by **defendant(s)** to be a/n (executive officer of a governmental unit)/(legislative/judicial/county/ municipal/(law enforcement)/public officer)/(public employee);

Fifth, with intent to influence **his/her** official action.

OUJI-CR 3-5



No person may be convicted of bribery unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **offering/giving/promising;**

Second, **money/goods/(right in action)/property/(valuable thing);**

Third, to a/n **(judicial officer)/juror/referee/arbitrator/umpire/assessor)/ (person authorized by law/[agreement of the parties] to hear/determine a controversy);**

Fourth, known by **defendant(s)** to be a/n **(judicial officer)/juror/referee/arbitrator/umpire/assessor)/(person authorized by law/[agreement of the parties] to hear/determine a controversy);**

Fifth, with intent to influence **his/her vote/opinion/decision.**

OUII-CR 3-6

No person may be convicted of bribery unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **offering/giving/promising**;

Second, **money/goods/(right in action)/property/(valuable thing)**;

Third, to **a/n player/participant/coach/referee/umpire/official/(person in authority)** in an athletic contest;

Fourth, known by **defendant(s)** to be **a/n player/participant/coach/referee/ umpire/official/(person in authority)** in an athletic contest;

Fifth, with intent to influence **his/her (playing ability)/refereeing/coaching/ staging**.

OUII-CR 3-7

No person may be convicted of bribery unless the State has proved beyond a reasonable doubt each element of the crime.  
These elements are:

First, **offering/giving/promising**;

Second, **money/goods/(right in action)/property/(valuable thing)**;

Third, to a **witness/(potential witness)**;

Fourth, known by **defendant(s)** to be a **witness/(potential witness)**;

Fifth, with intent to influence **his/her** testimony.

OUJI-CR 3-8

No person may be convicted of bribery unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **offering/giving/(promising to give);**

Second, **money/goods/(right in action)/property/(valuable thing);**

Third, to **a/n agent/employee/trustee/guardian/lawyer/(officer of a corporation)/partner/(Specify Other Fiduciary Listed in 21 O.S. 1991, § 380);**

Fourth, known by **defendant(s)** to be **a/n agent/employee/trustee/guardian/ lawyer/(officer of a corporation)/partner/(Specify Other Fiduciary Listed in 21 O.S. 1991, § 380);**

Fifth, with intent to influence **his/her** conduct in relation to the affairs of **his/her employer/beneficiary/client/corporation/partnership/ (the person for whom he/she is acting);**

Sixth, which if accepted by the **agent/employee/ trustee/guardian/lawyer/ (officer of a corporation)/partner/(Specify Other Fiduciary Listed in 21 O.S. 1991, § 380)** would constitute the crime of accepting a bribe, the elements of which are as follows:

1. **a/n agent/employee/trustee/guardian/lawyer/(officer of a corporation)/partner/(Specify Other Fiduciary Listed in 21 O.S. 1991, § 380);**
2. with a corrupt intent;
3. without the consent of the **employer/beneficiary/client/corporation/ partnership/(the person for whom he/she is acting);**
4. knowingly;
5. **solicits/accepts/(agrees to accept) a bribe;**
6. to influence the conduct of the **agent/employee/trustee/ guardian/lawyer/(officer of a corporation)/partner/(Specify Other Fiduciary Listed in 21 O.S. 1991, § 380);**
7. in relation to the affairs of the **employer/beneficiary/client/ corporation/partnership/(the person for whom he/she is acting).**

OUII-CR 3-9

No person may be convicted of bribery unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **(asking for)/receiving/(agreeing to receive)**;

Second, **money/goods/(right in action)/property/(valuable thing)**;

Third, by an executive officer of a governmental unit;

Fourth, with intent to permit **his/her** official action to be influenced.

OUJI-CR 3-10

No person may be convicted of bribery unless the State has proved beyond a reasonable doubt each element of the crime.  
These elements are:

First, **(asking for)/receiving/(agreeing to receive)**;

Second, **money/goods/(right in action)/property/(valuable thing)**;

Third, by a legislator;

Fourth, with intent to permit **his/her** official action to be influenced.

OUJI-CR 3-11

No person may be convicted of bribery unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **(asking for)/receiving/(agreeing to receive)**;

Second, **money/goods/(right in action)/property/(valuable thing)**;

Third, by **a/an (executive officer of a governmental unit)/(legislative/judicial/ county/municipal/(law enforcement)/public officer)/(public employee)**;

Fourth, with intent to permit **his/her** official action to be influenced.

OUJI-CR 3-12

No person may be convicted of bribery unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **(asking for)/receiving/(agreeing to receive);**

Second, **money/goods/(right in action)/property/(valuable thing);**

Third, by **a/n (judicial officer)/juror/referee/arbitrator/umpire/assessor/ (person authorized by law/[agreement of the parties]) to hear/determine a controversy];**

Fourth, with intent to permit **his/her vote/opinion/decision** to be influenced.

OUJI-CR 3-13



No person may be convicted of bribery unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **(asking for)/receiving/(agreeing to receive)**;

Second, **money/goods/(right in action)/property/(valuable thing)**;

Third, by **a/n player/participant/coach/referee/umpir e/official/(person in authority)** in an athletic contest;

Fourth, with intent to permit **his/her (playing ability)/refereeing/coaching/ staging** to be influenced.

OUII-CR 3-14

No person may be convicted of bribery unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, a/n agent/employee/trustee/guardian/lawyer/ (officer of a corporation)/ partner/(Specify Other Fiduciary Listed in 21 O.S. 1991, § 380);

Second, with a corrupt intent;

Third, without the consent of the employer/beneficiary/client/corporation/ partnership/(the person for whom he/she is acting);

Fourth, knowingly;

Fifth, solicits/accepts(agrees to accept) a bribe;

Sixth, to influence the conduct of the agent/employee/trustee/guardian/lawyer / (officer of a corporation)/partner/(Specify Other Fiduciary Listed in 21 O.S. 1991, § 380);

Seventh, in relation to the affairs of the employer/beneficiary/client/ corporation/partnership/(the person for whom he/she is acting).

OUII-CR 3-15

Bribe - The term "bribe" signifies any money, goods, right in action, property, thing of value or advantage, present or prospective, or any promise or undertaking, asked, given or accepted with a corrupt intent to influence unlawfully the person to whom it is given, in his action, vote or opinion, in any public or official capacity.

Reference: 21 O.S. 1991, § 97.

Corrupt Intent -- A wrongful intent to obtain money or other benefit.

Reference: 21 O.S. 1991, § 94.

Person - A human being; may, where appropriate, include a corporation.

Reference: 21 O.S. 1991, § 105.

Property - Property includes:

- (a) Real Property - Every estate, interest, and right in lands including structures or objects permanently attached to the land;
- (b) Personal Property - Money, goods, chattels, effects, evidences of rights in action, and written instruments effecting a monetary obligation or right or title to property.

References: 21 O.S. 1991, §§ 102, 103, 104.

Public Employee - A person who, after election or appointment, whether or not he/she has taken his/her seat, is:

- (a) An executive, legislative, judicial, county, or municipal officer; or
- (b) An employee of the State of Oklahoma or any county, city, or other political subdivision, including peace officers and other law enforcement officers.

References: Wilkins v. State, 70 Okl. Cr. 1, 104 P.2d 289 (1940); State v. Sowards, 64 Okl. Cr. 430, 82 P.2d 324 (1938); 21 O.S. 1991, § 381.

Public Officer - A person, acting in executive, legislative, or judicial capacity, who is elected or appointed, with authority or duty given to him by law, exercising functions concerning the public or for public benefit, and who, in doing so, is vested with some portion of the sovereign power of the State.

References: State v. Evans, 319 P.2d 1112 (Okl. 1957); State v. Sowards, 64 Okl. Cr. 430, 82 P.2d 324 (1938); Allen v. State, 63 Okl. Cr. 16, 72 P.2d 516 (1937); 21 O.S. 1991, §§ 265, 381.

OUII-CR 3-16

INSTRUCTION No. \_\_\_\_\_

The defendant(s) is/are charged with perjury/(perjury by contradictory statements) by [Describe Briefly Means by Which Alleged Perjury Committed, e.g., Testimony in Trial of (Name of Parties), Affidavit Concerning (Subject)] on [Date] in [Name of County] County, Oklahoma.

OUJI-CR 3-17

No person may be convicted of perjury unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **making/subscribing**;

Second, a statement;

Third, **(known by the defendant(s) to be not true)/(believed by the defendant(s) to be not true)/(with intent to avoid or obstruct the ascertainment of truth)**;

Fourth, under **oath/affirmation/(legally binding assertion)**;

Fifth, **authorized/required** by law in **a/an trial/hearing/investigation/ deposition/certification/declaration**.

OUII-CR 3-18

No person may be convicted of making a materially false statement during an internal investigation unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, knowingly;

Second, making;

Third, a materially false statement, either verbally or in writing;

Fourth, in the course of an internal State agency investigation;

Fifth, after being informed, in writing and prior to the interview, that providing a materially false statement shall subject the person to criminal prosecution.

OUII-CR 3-19

No person may be convicted of making a materially false statement during an internal investigation unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, knowingly;

Second, making;

Third, a materially false statement, either verbally or in writing;

Fourth, in the course of an internal State agency investigation;

Fifth, after being informed, in writing and prior to the interview, that providing a materially false statement shall subject the person to criminal prosecution.

OUII-CR 3-19

INSTRUCTION No. \_\_\_\_\_

The **defendant(s) is/are** charged with subornation of perjury by suborning **[Name of Person Allegedly Suborned]** on **[Date]** in **[Name of County]** County, Oklahoma.

OUII-CR 3-20



No person may be convicted of subornation of perjury unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, bringing about;

Second, perjury by another person;

Third, **known/believed** by **defendant(s)** to be perjury committed by that other person.

OUII-CR 3-21

INSTRUCTION No. \_\_\_\_\_

Note: The trial judge should define perjury by setting forth the elements of perjury or perjury by contradictory statements as appropriate to the type of perjury allegedly brought about by the defendant. (See OUII-CR 3-18 or OUII-CR 3-19, *supra*.)

OUII-CR 3-22

No person may be convicted of contempt of court unless the State has proved the following beyond a reasonable doubt:

First, the willful;

Second, **disobedience/(interference with the carrying out);**

Third, of a **lawful order/process** of a court.

OUII-CR 3-23

No person may be convicted for violation of a protective order unless the State has proved beyond a reasonable doubt each and every element of the crime. These elements are:

First, willful;

Second, violation of a protective order;

Third, served on the defendant.

OUII-CR 3-24

No person may be convicted for violation of a protective order unless the State has proved beyond a reasonable doubt each and every element of the crime. These elements are:

First, willful;

Second, violation of a protective order;

Third, which had been served on the defendant;

Fourth, while committing the violation, the defendant caused physical **injury/impairment** to the person protected by the order;

Fifth, without justifiable excuse to cause the **injury/impairment**.

OUII-CR 3-25

INSTRUCTION No. \_\_\_\_\_

If you find that the defendant caused physical **injury/impairment** to the person protected by the protective order, you shall consider the degree of physical **injury/impairment** in determining the term of imprisonment.

OUII-CR 3-26

A/n **[Identify Public Officer]** may be removed from office for **[any of]** the following **causes(s)**:

**[habitual or willful neglect of duty]**

**[gross partiality in office]**

**[oppression in office]**

**[corruption in office]**

**[extortion or willful overcharge of fees in office]**

**[willful maladministration]**

**[habitual drunkenness]**

**[failure to produce and account for all public funds and property in his/her hands, at any settlement or inspection authorized or required by law].**

[Willful neglect of duty means that the **[Identify Public Officer]**'s **act/(failure to act)** was for a bad or evil purpose, or that the **[Identify Public Officer]** deliberately **acted/(failed to act)** contrary to a known duty. Mere thoughtless acts, with no bad or evil purpose, in which there is no inexcusable carelessness or recklessness on the part of a/n **[Identify Public Officer]** do not justify removal from office.].

[Corruption in office means the **[Identify Public Officer]**'s unlawful and wrongful use of **his/her** public office to procure a benefit for **himself/herself** or another person, contrary to duty and the rights of others.]

[Willful maladministration means that the **[Identify Public Officer]**'s acts were done with a bad or evil intent or were contrary to a known duty, or the **[Identify Public Officer]** was inexcusably reckless in **performing/(failing to perform)** an official duty. Mere thoughtless acts, with no bad or evil purpose, or not involving inexcusable recklessness, even though they involve serious errors of judgment, do not justify removal from office.].

OUJI-CR 3-27

The **defendant(s)** may not be convicted of conducting or participating in the affairs of an enterprise through **(a pattern of racketeering activity)/(the collection of an unlawful debt)** unless the State has proved beyond a reasonable doubt each and every element of the crime.

These elements are:

First, the **defendant(s)** was/were **(employed by)/(associated with)** an enterprise;

Second, **conducted/(participated in)**, either indirectly or directly, the affairs of the enterprise; and

Third, through **(a pattern of racketeering activity)/(the collection of an unlawful debt)**.

OUJI-CR 3-28



The **defendant(s)** may not be convicted of acquiring or maintaining an interest in an enterprise through **(a pattern of racketeering activity)/(the collection of an unlawful debt)** unless the State has proved beyond a reasonable doubt each and every element of the crime.

These elements are:

First, the **defendant(s)** acquired or maintained, directly or indirectly, an interest in or control of any **enterprise/(real property)**;

Second, through **(a pattern of racketeering activity)/(the collection of an unlawful debt)**.

OUII-CR 3-29

The **defendant(s)** may not be convicted of investing the proceeds from **(a pattern of racketeering activity)/(the collection of an unlawful debt)** unless the State has proved beyond a reasonable doubt each and every element of the crime.

These elements are:

First, the **defendant(s)** received any proceeds derived, directly or indirectly;

Second, from **(a pattern of racketeering activity)/(the collection of an unlawful debt)**;

Third, in which the **defendant(s)** participated as a principal;

Fourth, used or invested, directly or indirectly, part or all of the proceeds derived from the use or investment of any of those proceeds to acquire any right, title, or interest in real property or in the establishment or operation of any enterprise;

[Fifth, if the investment or use involved a purchase of securities on the open market, in addition to the elements listed above, the State must prove beyond a reasonable doubt (a) the defendant intended to control or participate in the control of the issuer or intended to assist another to do so; and (b) all of the defendant's securities held by the defendant, **his/her** immediate family and their accomplices amount to one percent (1%) or more of the outstanding stock of any one class of the issuer and confer the power to elect one or more directors of the issuer.]

OUJI-CR 3-30

A pattern of racketeering activity means two or more occasions of conduct that include each of the following:

- (1) constituted racketeering activity,
- (2) were related to the affairs of the enterprise,
- (3) were not isolated,
- (4) were not so closely related to each other and connected in point of time and place that they constituted a single event, and

and where each of the following is present:

- (1) the last of the occasions of conduct occurred within three (3) years of a prior occasion of conduct,
- (2) each of the occasions of conduct constituted a felony under Oklahoma law.

OUII-CR 3-31

INSTRUCTION No. \_\_\_\_\_

The following conduct constitutes a felony under Oklahoma law: **[State the Elements of the Alleged Predicate Criminal Act(s) from the List of Felonies Set Out in 22 O.S. Supp. 1995, § 1402(10)].**

OUJI-CR 3-32

INSTRUCTION No. \_\_\_\_\_

An unlawful debt means any **money/(thing of value)** that is the principal or interest on a debt that is unenforceable in the Oklahoma courts because the debt violates **[Specify Law]**, which prohibits **[Describe Law]**, **[but it does not include a debt [(owed to a bank/(savings and loan association)/(credit union)]/ [assigned to a debt collection agency].**

OUJI-CR 3-33

Enterprise -- Enterprise includes any **individual/(sole proprietorship)/ partnership/corporation/trust/(governmental entity)/(other legal entity)/union/ association/(group of persons, associated in fact although not a legal entity,)** involved in any lawful or unlawful **project/undertaking**.

Reference: 22 O.S. Supp. 1995, § 1402(2).

Person - Any **individual/entity owning/(capable of owning)** property.

Reference: 22 O.S. Supp. 1995, § 1402(7).

OUJI-CR 3-34

No person may be convicted of filing a false claim against the State unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, any person **making/presenting/(causing the making/presenting of)** a;

Second, **false/fictitious/fraudulent** claim for payment of money from **(the State of Oklahoma)/(any department/ agency of the State of Oklahoma)**;

Third, known by **him/her** to be **false/fictitious/fraudulent**.

As used in this instruction:

["False" means documents wholly or partly fabricated or materially altered.]

["Fictitious" means imaginatively created past facts.]

["Fraudulent" means a false suggestion of facts or the suppression of the truth brought about through trick, false appearance, or through any other unfair way in order to cheat.]

OUII-CR 3-35  
(2000 Supp.)

No person may be convicted of destruction of public records unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willful;

Second, unlawful;

Third, destruction of records;

Fourth, of a State governmental entity reflecting **financial/business** transactions.

OUJI-CR 3-36  
(2000 Supp.)



No person may be convicted of destruction of evidence unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willful;

Second, destruction of any **book/paper/record/(instrument in writing)/ matter/thing**;

Third, knowing it was about to be produced in evidence at any **trial/proceeding/ inquiry/investigation** authorized by law;

Fourth, with the intent to prevent the **book/paper/record/(instrument in writing)/matter/thing** from being produced.

OUJI-CR 3-37  
(2000 Supp.)

No person may be convicted of filing a false/forged instrument unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, knowingly;

Second, **procuring/offering**;

Third, a **false/forged** instrument;

Fourth, to be **filed/registered/recorded** in any public office in Oklahoma.

An instrument is any document which, if genuine, could be **filed/ registered/recorded** under any law of Oklahoma or the United States.

OUII-CR 3-38

No person may be convicted of witness intimidation unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, **prevented/ (attempted to prevent);**

Third, a person who **(has been duly summoned/subpoenaed/ (endorsed on a (criminal information)/(juvenile petition))/(has made a report of abuse/neglect required by law)/(is a witness to a reported crime);**

Fourth, from **testifying/(producing a record/ document/object).**

**OR**

First, willfully;

Second, **threatened/procured;**

Third, **physical/mental** harm;

Fourth, through **force/fear;**

Fifth, to a person;

Sixth, **[with the intent to prevent the person from appearing in court to testify/produce a record/document/object]**

**OR**

Sixth, **[with the intent to make the person alter that person's testimony]**

**OR**

First, willfully;

Second, **(threatened physical harm through force/fear)/(caused/procured physical harm to be done)** to a person;

Third, because of **(testimony given by the person in a civil/criminal trial/proceeding)/(a report of abuse/neglect required by law).**

**OR**

First, willfully;

Second, **(harassed a person)/(caused a person to be harassed);**

Third, because of **(testimony given by the person in a civil/criminal trial/proceeding)/(a report of abuse/neglect required by law).**

No person may be convicted of failing to register as a sex offender unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the person has **(been convicted of)/(received a suspended sentence for)/(received a probationary term for)/(received a deferred judgment for)** [specify the particular crime listed in 57 O.S. 2011, § 582];

Second, the person received notice that **he/she** was required to register as a sex offender;

Third, the person failed to register with the **(Department of Corrections)/(specify the particular local law enforcement agency in 57 O.S. 2011, § 583(A) for the area where the person resides or intends to reside)/(Department of Corrections and the [specify the particular local law enforcement agency for the area where the person resides or intends to reside])**;

Fourth, **(within (three (3))/(two (2)) business days after)/(at least three (3) business days before)** [specify the particular event in 57 O.S. 2011, § 582 that triggered the registration requirement].

OUII-CR 3-40

No person may be convicted of failing to register as a violent offender under the Mary Rippy Violent Crime Offenders Registration Act unless the State has proved beyond a reasonable doubt each element of the crime.

First, the person has **(been convicted of)/(received a suspended sentence for)/(received a probationary term under the law of [specify other jurisdiction] for)/(received a deferred judgment for) [specify the particular crime listed in 57 O.S. 2021, § 593(B)]**;

Second, the person received notice that **he/she** was required to register as a violent offender with the Department of Corrections and the local law enforcement authority having jurisdiction in the area where the offender resides or intends to reside;

Third, the person failed to register with the **(Department of Corrections)/([specify the particular local law enforcement agency for the area where the person resides or intends to reside])/(Department of Corrections and the [specify the particular local law enforcement agency for the area where the person resides or intends to reside])**;

Fourth, within **[specify period of time in 57 O.S. 2021, § 594(A) or (B)]** after **[specify the particular event in 57 O.S. 2021, § 594(A) or (B) that triggered the registration requirement]**.

OUII-CR 3-41  
(2022 Supp.)

The **defendant(s)** is/are charged with:

[shooting with intent to kill]

[use of vehicle to facilitate the discharge of a weapon]

[assault and battery with a deadly weapon]

[assault and battery by means of force likely to produce death]

[an attempt to kill another]

[assault and battery in resisting execution of legal process]

[assault with intent to kill]

[assault with a dangerous weapon]

[battery with a dangerous weapon]

[assault and battery with a dangerous weapon]

[aggravated assault and battery]

[assault upon a police or other law officer]

[battery upon a police or other law officer]

[assault and battery upon a police or other law officer]

[aggravated assault and battery upon a police or other law officer]

[assault with intent to commit a felony]

[assault and battery upon a/an referee/(court officer)/(Department of Corrections employee)/(emergency medical care provider)]

[aggravated assault and battery upon an emergency medical care provider]

[interfering with an emergency medical care provider]

[assault]

[battery]

[assault and battery]

[stalking]

[malicious intimidation/harassment]

[inciting imminent violence]

of [Name of Alleged Victim] on [Date] in [Name of County] County, Oklahoma.



INSTRUCTION No. \_\_\_\_\_

An assault is any willful and unlawful attempt or offer to do a bodily hurt to another with force or violence.

OUII-CR 4-2



INSTRUCTION No. \_\_\_\_\_

A battery is any willful and unlawful use of force or violence upon the person of another.

OUII-CR 4-3

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of shooting with intent to kill unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, intentional and wrongful;

Second, **(shooting another person with)/(discharging)** a firearm;

Third, with the intent to kill any person.

OUII-CR 4-4

No person may be convicted of use of a vehicle to facilitate the discharge of a **firearm/crossbow/weapon** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, use of any vehicle;

Second, to facilitate the intentional discharge;

Third, of any **firearm/crossbow/weapon**;

Fourth, in the conscious disregard for the safety of any other person or persons.

OUII-CR 4-5

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of assault and battery with a deadly weapon unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

OUJI-CR 4-6

No person may be convicted of assault and battery with a deadly weapon unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, shooting;

Second, a [**Specify Applicable Relationship in 21 O.S. 2011, § 644(D)(2)**];

Third, with a deadly weapon;

Fourth, that is likely to produce death;

Fifth, without justifiable or excusable cause.

OUJI-CR 4-6A

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of assault and battery by means or force likely to produce death unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, an assault and battery;

Second, upon another person;

Third, with force likely to produce death;

OUII-CR 4-7

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of an attempt to kill another unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

OUJI-CR 4-8

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of assault and battery committed while avoiding legal process unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, an assault and battery;

Second, upon another person;

Third, while resisting the execution of any legal process.

OUII-CR 4-9  
(2000 Supp.)



No person may be convicted of assault with intent to kill unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, an assault;

Second, upon another person;

Third, with the intent to take a human life.

OUII-CR 4-10

If you find that the defendant intended to **kill/injure/assault [Name of Intended Victim]**, and by mistake or accident **injured/assaulted [Name of Actual Victim]**, the element of intent is satisfied even though the defendant did not intend to **kill/injure/assault [Name of Actual Victim]**. In such a case, the law regards the intent as transferred from the original intended victim to the actual victim.

OUII-CR 4-11  
(2019 Supp.)

No person may be convicted of **assault/battery/(assault and battery)** with a **sharp/dangerous** weapon unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **(an assault)/(a battery)/(an assault and battery)**;

Second, upon another person;

Third, with a **sharp/dangerous** weapon;

Fourth, without justifiable or excusable cause;

Fifth, with intent to do bodily harm.

OUJI-CR 4-12

No person may be convicted of domestic **assault/(assault and battery)** with a dangerous weapon unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **(an assault)/(a battery)/(an assault and battery)**;

Second, upon a **[Specify Applicable Relationship in 21 O.S. 2011, § 644(D)(1)]**;

Third, with a **sharp/dangerous** weapon;

Fourth, without justifiable or excusable cause;

Fifth, with intent to do bodily harm.

OUJI-CR 4-12A

No person may be convicted of **assault/battery/(assault and battery)** with a dangerous weapon by use of a firearm unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **(an assault)/(a battery)/(an assault and battery)**;

Second, upon another person;

Third, by shooting at another **(with a firearm)/(with an air gun)/(conductive energy weapon)/(by any means)**;

Fourth, without justifiable or excusable cause;

Fifth, with intent to injure any person.

OUII-CR 4-13

No person may be convicted of assault with intent to commit a felony unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, an assault;

Second, upon another person;

Third, with the intent to commit the felony of **[Indicate Specific Felony]**;

Fourth, the elements of the **[Indicate Specific Felony]** defendant is alleged to have been in the commission of are as follows:

OUJI-CR 4-14

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of aggravated assault and battery upon a **(police officer)/sheriff/(deputy sheriff)/(highway patrolman)/(corrections personnel)/(State peace officer)** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

OUJI-CR 4-15  
(2016 Supp.)

No person may be convicted of aggravated assault and battery upon a **(police officer)/sheriff/(deputy sheriff)/(highway patrolman)/(corrections personnel)/(State peace officer)** that results in maiming unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, an assault and battery;

Second, upon a **(police officer)/sheriff/(deputy sheriff)/(highway patrolman)/(corrections personnel)/(State peace officer)**;

Third, that the **defendant(s)** knew/(reasonably should have known) was a **(police officer)/sheriff/(deputy sheriff)/(highway patrolman)/(corrections personnel)/(State peace officer)**;

Fourth, by inflicting great bodily injury;

Fifth, that **disfigured/disabled/(seriously diminished physical vigor)**;

Sixth, without justifiable or excusable cause;

Seventh, committed while the **(police officer)/sheriff/(deputy sheriff)/(highway patrolman)/(corrections personnel)/(State peace officer)** was in the performance of his/her duties as a **(police officer)/sheriff/(deputy sheriff)/(highway patrolman)/(corrections personnel)/ (State peace officer)**.

OUJI-CR 4-15A



No person may be convicted of **assault/battery/(assault and battery)** upon a **(police officer)/sheriff/(deputy sheriff)/(highway patrolman)/(corrections personnel)/(State peace officer)** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **(an assault)/(a battery)/(an assault and battery)**;

Second, upon a **(police officer)/sheriff/(deputy sheriff)/(highway patrolman)/(corrections personnel)/(State peace officer)**;

Third, known by the **defendant(s)** to be a **(police officer)/ sheriff/(deputy sheriff)/(highway patrolman)/(corrections personnel)/(State peace officer)**;

Fourth, without justifiable or excusable cause;

Fifth, committed while the **(police officer)/sheriff/(deputy sheriff)/(highway patrolman)/(corrections personnel)/(State peace officer)** was in the performance of **his/her** duties as a **(police officer)/sheriff/(deputy sheriff)/(highway patrolman)/(corrections personnel)/(State peace officer)**.

First, a willful attempt to **(reach for)/(gain control)**;

Second, of the firearm;

Third, of any **(police officer)/sheriff/(deputy sheriff)/(highway patrolman)/(corrections personnel)/(a peace officer employed by a state/federal governmental agency to enforce state laws)**;

Fourth, known by the **defendant(s)** to be a **(police officer)/sheriff/(deputy sheriff)/(highway patrolman)/(corrections personnel)/(peace officer)**;

Fifth, without justifiable or excusable cause;

Sixth, committed while the **(police officer)/sheriff/(deputy sheriff)/(highway patrolman)/(corrections personnel)/(peace officer)** was in the performance of **his/her** duties as a **(police officer)/sheriff/(deputy sheriff)/(highway patrolman)/(corrections personnel)/(peace officer)**.

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Statutory Authority: 21 O.S. 2011, § 648, 21 O.S. 2015, § 649.

OUII-CR 4-16  
(2016 Supp.)

No person may be convicted of **assault/battery/(assault and battery)** upon a **referee/umpire/timekeeper/coach/(athletic official)/(person with authority in connection with any amateur or professional athletic contest)** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **(an assault)/(a battery)/(an assault and battery)**;

Second, upon a **referee/umpire/timekeeper/coach/(athletic official)/(person with authority in connection with any amateur or professional athletic contest)**;

Third, without justifiable or excusable cause;

Fourth, with intent to do bodily harm;

Fifth, while the **referee/umpire/timekeeper/coach/(athletic official)/(person with authority in connection with any amateur or professional athletic contest)** was in the performance of **his/her** duties as a **referee/umpire/ timekeeper/coach/(athletic official)/(person with authority in connection with any amateur or professional athletic contest)**.

OUII-CR 4-17

No person may be convicted of **assault/battery/(assault and battery)** upon a **(School Employee)/Student** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **(an assault)/(a battery)/(an assault and battery)**;

Second, without justifiable or excusable cause:

[ Third, upon a **teacher/principal/(duly appointed person employed by a school system)/(employee of a firm contracting with a school system)**;

Fourth, while the **teacher/principal/(duly appointed person employed by a school system)/(employee of a firm contracting with a school system)** was in the performance of **his/her** duties as a school employee; ]

[ Third, upon a student;

Fourth, while the student was **(participating in any school activity)/(attending classes on school property during school hours)** ]

OUJI-CR 4-17A

No person may be convicted of aggravated **battery/(assault and battery)** upon a school employee unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **(a battery)/(an assault and battery)**;

Second, by inflicting great bodily injury;

Third, without justifiable or excusable cause;

Fourth, upon a **teacher/principal/(duly appointed person employed by a school system)/(employee of a firm contracting with a school system)**;

Fifth, while the **teacher/principal/(duly appointed person employed by a school system)/(employee of a firm contracting with a school system)** was in the performance of **his/her** duties as a school employee.

OUJI-CR 4-17B

No person may be convicted of aggravated assault and battery upon a Department of **(Human Services)** employee unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, an assault and battery;

Second, by a person in the custody of the Department of **Corrections/(Human Services)**;

Third, upon a Department of **(Human Services)** employee;

Fourth, known by the **defendant(s)** to be a Department of **(Human Services)** employee;

Fifth, by inflicting great bodily injury;

Sixth, without justifiable or excusable cause;

Seventh, committed while the Department of **(Human Services)** employee was in the performance of **his/her** duties as a Department of **(Human Services)** employee.

OUII-CR 4-18

No person may be convicted of **assault/battery/(assault and battery)** upon a Department of Corrections employee unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **(an assault)/(a battery)/(an assault and battery)**;

Second, by a person in the custody of the Department of Corrections;

Third, upon a Department of Corrections employee;

Fourth, known by the **defendant(s)** to be a Department of Corrections employee;

Fifth, without justifiable or excusable cause;

Sixth, committed while the Department of Corrections employee was in the performance of **his/her** duties as a Department of Corrections employee.

OUJI-CR 4-18A

No person may be convicted of **assault/battery/(assault and battery)** upon An employee of a **(facility for delinquent children)/(juvenile detention center)/(juvenile bureau)** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **(an assault)/(a battery)/(an assault and battery)**;

Second, upon an employee of a **(facility maintained by [the Office of Juvenile Affairs]/[private contractor pursuant to a contract with the Office of Juvenile Affairs primarily for delinquent children])/(juvenile detention center)/(juvenile bureau)**;

Third, known by the **defendant(s)** to be an employee of a **(facility maintained by [the Office of Juvenile Affairs]/[private contractor pursuant to a contract with the Office of Juvenile Affairs primarily for delinquent children])/(juvenile detention center)/(juvenile bureau)**;

Fourth, without justifiable or excusable cause;

Fifth, committed while the employee was in the performance of **his/her** duties as an employee of a **(facility maintained by [the Office of Juvenile Affairs]/[private contractor pursuant to a contract with the Office of Juvenile Affairs primarily for delinquent children])/(juvenile detention center)/(juvenile bureau)**;

OUI-CR 4-18B

No person may be convicted of **throwing/transferring/placing** body **wastes/fluids** upon a government **employee/contractor** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, while in the custody of **(the state/county/city)/(a contractor of the state/county/city)**;

Second, intentional;

Third, **(throwing/transferring/placing)** of **(feces/urine/semen/saliva/blood)**;

Fourth, upon the person of an employee of **(the state/county/city)/(a contractor of the state/county/city)**.

OUJI-CR 4-18C



No person may be convicted of **assault/battery/(assault and battery)** upon a **judge/bailiff/(court reporter)/(court clerk)/(deputy court clerk)/officer/ juror/witness** of **(a State district/appellate)/(the Workers' Compensation)** court unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **(an assault)/(a battery)/(an assault and battery)**;

Second, upon a **judge/bailiff/(court reporter)/(court clerk)/(deputy court clerk)/officer/juror/witness** of **(a State district/appellate)/(the Workers' Compensation)** court;

Third, because of the **[judge/bailiff/(court reporter)/(court clerk)/(deputy court clerk)/officer/juror/witness]**'s service in that capacity.

OUJI-CR 4-19

No person may be convicted of **assault/battery/(assault and battery)** upon an emergency medical care provider unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **(an assault)/(a battery)/(an assault and battery)**;

Second, upon an emergency medical care provider;

Third, without justifiable or excusable cause;

Fourth, with intent to do bodily harm;

Fifth, while the emergency medical care provider was performing medical care duties.

OUJI-CR 4-20

No person may be convicted of aggravated assault and battery upon an emergency medical technician/(care provider) unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, an **(assault and battery)/(assault with a firearm/(deadly weapon))**;

Second, upon an emergency medical **technician/(care provider)**;

Third, **by inflicting great bodily injury**;

Fourth, **with intent to do bodily harm**;

Fifth, without justifiable or excusable cause;

Sixth, committed while the **technician/(care provider)** was in the performance of **his/her** duties as an emergency medical **technician/(care provider)**.

OUII-CR 4-21

No person may be convicted of interfering with an emergency medical **technician/(care provider)** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, **delaying/obstructing/(in any way interfering with)**;

Third, an emergency medical **technician/(care provider)**;

Fourth, **[in (the performance of)/(the attempt to perform) emergency medical care and treatment]/[in (going to)/(returning from) the scene of a medical emergency]**.

OUJI-CR 4-22

No person may be convicted of aggravated assault and battery unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, an assault and battery;

Second, upon another person;

Third, by inflicting great bodily injury.

For the definition of great bodily injury, see OUJI-CR 4-28, *infra*.

OUJI-CR 4-23  
(2003 Supp.)

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of aggravated assault and battery unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, an assault and battery;

Second, upon another person who is aged, decrepit, or incapacitated;

Third, by **[a] person(s)** of robust health or strength.

OUII-CR 4-24

No person may be convicted of assault unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willful;

Second, unlawful;

Third, **attempt/offer** with force or violence to do bodily harm;

Fourth, to another person.

OUJI-CR 4-25

No person may be convicted of assault and battery unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willful;

Second, unlawful;

Third, use of force or violence;

Fourth, upon another person.

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Statutory Authority: 21 O.S. 2011, §§ 641, 642.

OUII-CR 4-26  
(2018 Supp.)



No person may be convicted of domestic abuse unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willful;

Second, unlawful;

Third, attempting or offering to use force or violence; and

Fourth, the use of force or violence;

Fifth, was against the person of a **[Specify Applicable Relationship in 21 O.S. Supp. 2000, § 644(C)]**.

OUII-CR 4-26A

No person may be convicted of domestic abuse with great bodily injury unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willful;

Second, unlawful;

Third, attempting or offering to use force or violence; and

Fourth, the use of force or violence;

Fifth, was against the person of a [**Specify Applicable Relationship in 21 O.S. Supp. 2011, § 644(C)**].

Sixth, resulting in great bodily injury.

OUJI-CR 4-26B

No person may be convicted of domestic abuse in the presence of a child unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willful;

Second, unlawful;

Third, attempting or offering to use force or violence; and

Fourth, the use of force or violence;

Fifth, was against the person of a [**Specify Applicable Relationship in 21 O.S. Supp. 2011, § 644(C)**].

Sixth, was committed in the presence of a child.

A child is any child whether or not related to the victim or the defendant. In the presence of a child means in the child's physical presence or the defendant knows a child is present and may see or hear an act of domestic violence.

OUJI-CR 4-26C

No person may be convicted of domestic abuse by strangulation unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willful;

Second, unlawful;

Third, attempting or offering to use force or violence; and

Fourth, the use of force or violence;

Fifth, was against the person of a [**Specify Applicable Relationship in 21 O.S. Supp. 2011, § 644(J)**].

Sixth, with the intent to cause great bodily harm by **strangulation/(attempted strangulation)**.

Strangulation means any kind of asphyxia, including but not limited to, closure of the **(blood vessels)/(air passages)/nostrils/mouth** as a result of external pressure on the **head/neck**.

OUII-CR 4-26D

No person may be convicted of domestic abuse against a pregnant woman unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willful;

Second, unlawful;

Third, attempting or offering to use force or violence; and

Fourth, the use of force or violence;

Fifth, was against a pregnant woman;

Sixth, who was a **[Specify Applicable Relationship in 21 O.S. 2011, § 644(C)]**; and

Seventh, the defendant knew the woman was pregnant.

Eighth, a **miscarriage/(injury to the unborn child)** occurred.]

OUII-CR 4-26E

INSTRUCTION No. \_\_\_\_\_

When conduct is charged to constitute an offense because it causes or threatens bodily harm, consent to such conduct or to the infliction of such harm is a defense if:

**[the bodily harm consented to or threatened by the conduct consented to is not serious]**

**[the conduct and the harm are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport].**

OUJI-CR 4-27  
(2000 Supp.)

**Dangerous Weapon** - Any **pistol/revolver/dagger/(bowie/dirk/switch-blade/ spring-type knife)/(sword cane)/(knife having a blade which opens automatically)/ blackjack/(loaded cane)/billy/(hand chain)/(metal knuckles)/(implement likely to produce death or great bodily harm in the manner it is used or attempted to be used).**

References: Wilcox v. State, 13 Okl. Cr. 599, 166 P. 74 (1917); 21 O.S. Supp. 2000, § 1272.

**Deadly Weapon** - Any instrument designed or constructed to cause death or great bodily injury. A **pistol/revolver/dagger/(bowie/dirk/switch-blade/spring-type knife)/(sword cane)/(knife having a blade which opens automatically)/blackjack/ (loaded cane)/billy/(hand chain)/(metal knuckles)** is a deadly weapon.

References: Beeler v. State, 1959 OK CR 9, 334 P.2d 799; 21 O.S. 2001, § 1272.

**Decrepit** - Physically impaired by old age, physical defects, or infirmities.

Reference: Herrington v. State, 1960 OK CR 45, 352 P.2d 931.

**Execution of Legal Process** - Carrying out or enforcement of a judgment, decision, or order of a court.

References: Black's Law Dictionary 510 (5th ed. 1979); 15A Words and Phrases 265; 34 Words and Phrases 245.

**Firearm** - Weapon from which a shot or projectile is discharged by force of a chemical explosive such as gunpowder. An airgun, such as a carbon dioxide gas-powered air pistol, is not a firearm within the meaning of the definition.

References: 21 O.S. 2001, §§ 1289.3 et seq.; Black's Law Dictionary 570 (5th ed. 1979); Thompson v. State, 1971 OK CR 328, ¶ 8, 488 P.2d 944, 947, overruled on other grounds, Dolph v. State, 1974 OK CR 46, ¶ 10, 520 P.2d 378, 380-81.

**Force** - Any touching of a person regardless of how slight may be sufficient to constitute force. Such touching may be brought about directly or indirectly by defendant.

Reference: R. Perkins, Criminal Law 80 (2d ed. 1969).

**Great Bodily Injury** - (Bone fracture)/(protracted and obvious disfigurement)/(protracted loss/impairment of the function of a (body part)/organ/ (mental faculty)/(substantial risk of death).

Reference: 21 O.S. Supp. 2002, § 646.

**Intentional** - Deliberate; with knowledge of the natural and probable consequences.

References: Davis v. State, 1960 OK CR 6, 354 P.2d 466; Tyner v. United States, 2 Okl. Cr. 689, 103 P. 1057 (1909).

**Knowingly** - Personally aware of the facts.

Reference: 21 O.S. 2001, § 96.

**Known** - With personal awareness of the facts.

Reference: 21 O.S. 2001, § 96.

**Maiming** - Note: see maiming instruction, OUJI-CR 4-113.

**Malicious** - The term imports a wish to vex, annoy or injure another person.

Reference: 21 O.S. 2001, § 95.

Procured - Brought about or obtained.

Reference: Black's Law Dictionary 1087 (5th Ed. 1979).

Robust - Having strength or vigorous health.

Reference: Webster's Third New International Dictionary 1964 (1961).

Unlawful - Without legal justification.

Reference: 91 C.J.S. Unlawful 491.

While in the Performance of His/Her Duties- While acting in relation to law enforcement for the benefit of the general public, regardless of whether or not those acts are performed while "off duty" from the actor's regular police department or law enforcement employment; not including, however, those acts performed off duty for a private employer.

References: Brooks v. State, 1977 OK CR 96, 561 P.2d 137; Stewart v. State, 1974 OK CR 173, 527 P.2d 22.

Willful - Purposeful. "Willful" does not require any intent to violate the law, or to injure another, or to acquire any advantage.

Reference: 21 O.S. 2001, § 92.

Wrongful - Without justification or excuse.

Reference: Bartell v. State, 4 Okl. Cr. 135, 111 P. 669 (1910).

OUII-CR 4-28  
(2003 Supp.)



No person may be convicted of stalking unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, maliciously;

Third, repeatedly;

Fourth, **followed/harassed** another person;

Fifth, in a manner that would cause a reasonable person **[or member of that person's immediate family]**;

Sixth, to feel **frightened/intimidated/threatened/harassed/ molested**; and

Seventh, actually caused the person being **followed/harassed** to feel **terrorized/frightened/intimidated/threatened/ harassed/molested**.

OUII-CR 4-29  
(2000 Supp.)

No person may be convicted of stalking in violation of a court order unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, maliciously;

Third, repeatedly;

Fourth, **followed/harassed** another person;

Fifth, in a manner that would cause a reasonable person [or member of that person's immediate family];

Sixth, to feel **frightened/intimidated/threatened/harassed/ molested**;

Seventh, actually caused the person being **followed/harassed** to feel **terrorized/frightened/intimidated/threatened/ harassed/molested**;

Eighth, a/an (**temporary/permanent restraining order**)/(**protective order**)/(**emergency ex parte protective order**)/**injunction** prohibited the defendant's actions; and

Ninth, the defendant had actual notice of the issuance of the **order/injunction**.]

Eighth, the defendant was on **probation/parole**; and

Ninth, a condition of the **probation/parole** prohibited the defendant's actions.]

Eighth, the defendant completed a **sentence/conviction** of a crime involving the **use/threat** of violence against the same person, or against a member of that person's immediate family; and

Ninth, within ten years of the defendant's actions.]

Emotional Distress - Significant mental suffering or distress that may, but does not necessarily require, medical or other professional treatment or counseling.

Reference: 21 O.S. Supp. 2000, § 1173(F)(3).

Harass - A pattern or course of conduct directed toward a person that would cause a reasonable person to suffer emotional distress and that actually causes emotional distress to the victim.

Reference: 21 O.S. Supp. 2000, § 1173(F)(1).

Member of the Immediate Family - Any spouse/parent/child/brother/sister/grandparent/grandchild/uncle/aunt/niece/nephew/cousin/(person who regularly resides in the household)/(person who regularly resided in the household within the prior six months).

Reference: 21 O.S. Supp. 2000, § 1173(F)(5).

OUII-CR 4-31  
(2000 Supp.)

No person may be convicted of malicious intimidation or harassment unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, maliciously;

Second, **[assaulted/battered another person]**

**[damaged/destroyed/vandalized/defaced any real/personal property of another person)]**

**[threatened to assault/batter another person if there was reasonable cause to believe the assault/battery would occur]**

**[threatened to damage/destroy/vandalize/deface any real/personal property of another person if there was reasonable cause to believe that the harm to the property would occur];**

Third, with the specific intent to intimidate or harass another person because of that person's **race/color/religion/ancestry/(national origin)/disability**.

OUII-CR 4-32  
(2000 Supp.)

No person may be convicted of making obscene, threatening, or harassing electronic communications unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, by means of an electronic communication device;

Third, making a **comment/request/suggestion/proposal** which is obscene as opposed to merely ungentle or vulgar.

A **comment/request/suggestion/proposal** is obscene if: 1) the average person applying contemporary community standards would find that the **comment/request/suggestion/proposal**, taken as a whole, appeals to the prurient interest, 2) it depicts or describes sexual conduct in a patently offensive way, and 3) taken as a whole, it lacks serious literary, artistic, political or scientific value. For a definition of Sexual Conduct see OUJI-CR 4-139.

Third, making an electronic communication with intent to **terrify/intimidate/harass/threaten** to inflict **injury/(physical harm)** to any **person/(property of a person)**.

Third, making an electronic communication with the intent to put the party called in fear of **(physical harm)/death**.

Third, making an electronic communication without disclosing the identity of the caller/sender;

Fourth, with the intent to **annoy/ abuse/ threaten/ harass** any person at the location receiving the electronic communication.

An electronic communication includes any type of telephone, electronic, or radio communication, or transmission of signals or data by telephone, cellular telephone, wire, cable, or wireless means, including the Internet, electronic mail, instant message, network call, facsimile machine, or communication to a pager.

OUJI-CR 4-32A

No person may be convicted of inciting imminent violence unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, maliciously;

[Second, **made/transmitted/(caused/allowed to be transmitted)**;

Third, any **telephone/electronic** message likely to incite or produce imminent violence;]

[Second, **broadcasted/published/distributed/(caused/allowed to be broadcast/published/distributed)**;

Third, any **message/material** likely to incite or produce imminent violence;]

Fourth, with the specific intent to incite or produce imminent violence against another person because of that person's **race/color/religion/ancestry/ (national origin)/disability**.

OUJI-CR 4-33  
(2000 Supp.)

The **defendant(s)** is/are charged with

**[the (abuse/neglect/(sexual abuse/exploitation) of a child]**

**[enabling the (abuse/neglect/(sexual abuse/exploitation) of a child]**

**[omission to provide for child]**

**[(failure to pay)/(leaving the State to avoid) child support]**

**[neglect of a drug/alcohol dependent child]**

**[violating a child custody order]**

**[contributing to the (delinquency of)/(commission of a felony) by a minor]**

**[encouraging street gang activity]**

**[encouraging a minor to (commit a drug-related crime)/[be in need of supervision)]**

**[procuring/keeping/(permitting the procuring/keeping of) a minor for prostitution]**

on **[Date]** in **[Name of County]** County, Oklahoma.

OUJI-CR 4-34  
(2000 Supp.)

No person may be convicted of child abuse unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, a person responsible for a child's health, safety, or welfare;

Second, **willfully/maliciously**;

Third, **harmed/(threatened harm)/(failed to protect from harm/(threatened harm))** to the health, safety, or welfare;

Fourth, of a child under the age of eighteen.

**OR**

First, a person **willfully/maliciously**;

Second, **injured/tortured/maimed**;

Third, a child under the age of eighteen;

OUII-CR 4-35  
(2022 Supp.)



INSTRUCTION No. \_\_\_\_\_

It is not child abuse for a **parent/teacher/person** to use reasonable and ordinary force to discipline a child, including, but not limited to, spanking, switching, or paddling, so long as the force is reasonable in manner and moderate in degree.

OUJI-CR 4-35A  
(2022 Supp.)

Evidence has been introduced in this case that the defendant, in good faith, selected and depended upon spiritual means alone through prayer, and according to the tenets and practice of a recognized **church/(religious denomination)**, for the **(treatment/cure of a disease)/(remedial care)** of a child. It is the burden of the State to prove beyond a reasonable doubt that the defendant did not, in good faith, select and depend upon spiritual means alone through prayer, and according to the tenets and practice of a recognized **church/(religious denomination)**, for the **(treatment/cure of a disease)/(remedial care)** of the child. If you find that the State has failed to sustain that burden, then the defendant must be found not guilty.

OUII-CR 4-35B  
(2022 SUPP.)

No person may be convicted of enabling the abuse of a child unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, a person responsible for a child's health, safety, or welfare;

Second, **willfully/maliciously caused/procured/permited**;

Third, a **willful/malicious** act of **harm/(threatened harm)**;

Fourth, to the health, safety, or welfare;

Fifth, of a child under the age of eighteen;

Sixth, by another person responsible for a child's health, safety, or welfare..

**OR**

First, a person responsible for a child's health, safety, or welfare;

Second, **willfully/maliciously caused/procured/permited**;

Third, another person responsible for a child's health, safety, or welfare;

Fourth, to **willfully/maliciously** fail to protect from **harm/(threatened harm)** to the health, safety, or welfare;

Fifth, of a child under the age of eighteen;

**OR**

First, a person responsible for a child's health, safety, or welfare;

Second, **willfully/maliciously caused/procured/permited**;

Third, another person;

Fourth, to **willfully/maliciously injure/torture/main**;

Fifth, a child under the age of eighteen.

OUII-CR 4-36  
(2022 Supp.)

## NEGLECT OF CHILD - ELEMENTS

No person may be convicted of neglect of a child unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, a person responsible for the child's health, safety, or welfare;

Second, **willfully/maliciously**;

[Third, **failed/omitted** to provide;

Fourth, **[adequate (nurturance and affection)/food/clothing/shelter/ sanitation/hygiene)/(appropriate education)]/(medical/dental/(behavioral health) care/ [supervision/(appropriate caretakers) to protect the child from harm/(threatened harm) of which any reasonable and prudent person responsible for the child's health, safety or welfare would be aware]/(special care made necessary for the child's health and safety by the physical/mental condition of the child);**

Fifth, for a child under the age of eighteen.]

[Third, **failed/omitted** to protect;

Fourth, a child under the age of eighteen from exposure to;

Fifth, **(the use/possession/sale/manufacture of illegal drugs)/(illegal activities)/(sexual acts or materials that are not age-appropriate).]**

[Third, abandoned;

Fourth, a child under the age of eighteen.]

---

Statutory Authority: 21 O.S. 2021, § 843.5(C), (O)(2), 10A O.S. 2021, § 1-1-105(49).

In *Fairchild v. State*, 1999 OK CR 49, ¶ 51, 998 P.2d 611, 622-23, the Oklahoma Court of Criminal Appeals decided that the *mens rea* for felony murder of a child under 21 O.S. Supp. 1999, § 701.7(C) was a general intent to commit the act which causes the injury, rather than a specific intent, and that the general intent was included within the terms "willfully" or "maliciously."

OUJI-CR 4-37  
(2022 Supp.)

"Neglect" shall not mean a child who engages in independent activities, except if the person responsible for the child's health, safety or welfare willfully disregards any **(harm/(threatened harm))** to the child, given the child's level of **maturity/(physical condition)/(mental abilities)**. Such independent activities include but are not limited to:

- (1) traveling to and from school including by walking/running/ bicycling,
- (2) traveling to and from nearby commercial or recreational facilities,
- (3) engaging in outdoor play,
- (4) remaining at home unattended for a reasonable amount of time,
- (5) remaining in a vehicle if the temperature inside the vehicle (is not)/(will not) become dangerously hot/cold, except if [describe applicable conditions in Section 11--1119 of Title 47 of the Oklahoma Statutes, such as that the child is accompanied by a person who is at least twelve years of age], or
- (6) engaging in similar activities (alone/(with other children)).

---

Statutory Authority: 10A O.S. 2021, § 1-1-105(49).

This Instruction lists independent activities that might not constitute "neglect." This should be given only if applicable, and it should include only those activities that are pertinent to the case. 10A O.S. 2021, § 1-1-105(49)(b).

OUII-CR 4-37A  
(2022 Supp.)

No person may be convicted of enabling the neglect of a child unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, a person responsible for a child's health, safety, or welfare;

Second, **willfully/maliciously caused/procured/permitted**;

Third, another person responsible for a child's health, safety or welfare to **willfully/maliciously fail/omit** to provide;

Fourth, [**adequate (nurturance and affection)/food /clothing/shelter/ sanitation/hygiene)/(appropriate education)]/ (medical/dental/ (behavioral health) care/ [supervision/(appropriate caretakers) to protect the child from harm/(threatened harm) of which any reasonable and prudent person responsible for the child's health, safety or welfare would be aware]/(special care made necessary for the child's health and safety by the physical/mental condition of the child)**;

Fifth, for a child under the age of eighteen.]

Third, another person responsible for a child's health, safety or welfare to **willfully/maliciously fail/omit**;

Fourth, to protect a child under the age of eighteen from exposure to;

Fifth, **(the use/possession/sale/manufacture of illegal drugs)/ (illegal activities)/(sexual acts or materials that are not age-appropriate).**]

Third, another person responsible for a child's health, safety or welfare to **willfully/maliciously** abandon;

Fourth, a child under the age of eighteen.]

---

Statutory Authority: 21 O.S. 2021, § 843.5(D), (O)(2), (O)(6), 10A O.S. 2021, § 1-1-105(49)

OUII-CR 4-38  
(2022 SUPP.)

No person may be convicted of the sexual **abuse/exploitation** of a child unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, a person responsible for a child's health, safety or welfare;

Second, **willfully/maliciously** engaged in;

Third, **(sexual intercourse)/(penetration of the vagina or anus, however slight, by an inanimate object or any part of the human body not amounting to sexual intercourse/sodomy/incest/(a lewd/indecent act/proposal/(specify other sexual abuse))**;

Fourth, **of/with/to** a child under the age of **eighteen/twelve**.

First, a person **willfully/maliciously**;

Second, engaged in **(specify the particular allegation of sexual exploitation enumerated in 21 O.S. § 843.5(O)(4));** )

Third, **of/to/with** a child under the age of **eighteen/twelve**.

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Statutory Authority: 21 O.S. 2021, § 843.5(E), (F), (H), (I), (O)(3), (O)4).

OUJI-CR 4-35, supra, should be used if the defendant is charged with child abuse.

The Oklahoma Court of Criminal Appeals directed the use of a differently worded instruction for cases under 10 O.S. Supp. 1995, § 7115 in *Huskey v. State*, 1999 OK CR 3, ¶ 12, 989 P.2d 1, 7. *A.O. v. State* overruled *Huskey*. 2019 OK CR 18, ¶ 10, 447 P.3d 1179, 1182.

In *Fairchild v. State*, 1999 OK CR 49, ¶ 51, 998 P.2d 611, 622-23, the Oklahoma Court of Criminal Appeals decided that the *mens rea* for felony murder of a child under 21 O.S. Supp. 1999, § 701.7(C) was a general intent to commit the act which causes the injury, rather than a specific intent, and that the general intent was included within the terms "willfully" or "maliciously."

Enhanced punishment for sexual abuse and sexual exploitation of children under the age of twelve was added in 2007.

OUJI-CR 4-39  
(2022 Supp.)

No person may be convicted of enabling the sexual **abuse/exploitation** of a child unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, a person **willfully/maliciously** ;

Second, **caused/procured/permitted**;

Third, another person who was responsible for the child's health, safety or welfare;

Fourth to **willfully/maliciously** engage in;

Fifth, **(sexual intercourse)/(penetration of the vagina or anus, however slight, by an inanimate object or any part of the human body not amounting to sexual intercourse/sodomy/incest/(a lewd/indecent act/proposal)/(specify other sexual abuse)**;

Sixth, **of/with/to** a child under the age of eighteen.

First, a person responsible for the child's health, safety or welfare;

Second, **willfully/maliciously** ;

Third, **caused/procured/permitted**;

Fourth, a **willful/malicious**;

Fifth, **[specify particular allegation of sexual exploitation enumerated in 21 O.S. 2021, § 843.5 (O)(4)]**;

Sixth, **of/to/with** a child under the age of eighteen;

Seventh, by **(another person)**.

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Statutory Authority: 21 O.S. 2021, § 843.5 (G), (J), (O)(3), (O)(4), and (O)(8).

OUJI-CR 4-40  
(2022 Supp.)



No person may be convicted of omission to provide for a child unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, a **parent/guardian/(person having custody/control)** of a child under 18 years of age;

Second, willfully;

Third, without lawful excuse;

Fourth, omitted to furnish necessary **food/clothing/shelter/(monetary child support)/(medical attention)/(payment of court-ordered day care/ [medical insurance])** for that child;

Fifth, as imposed by law upon the **parent/guardian/(person having custody/control)** of the child.

[The duty to provide medical attention means that the **parent/guardian/(person having custody/control of a child)** must provide medical treatment in the manner and on the occasions that an ordinarily prudent person, who is concerned for the welfare of a child, would provide. A **parent/guardian/(person having custody/control of a child)** is not liable for failing to provide medical attention for every minor or trivial complaint that a child may have.]

OUII-CR 4-40A

No person may be convicted of child endangerment unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, a **parent/guardian/(person having custody/control)** of a child under 18 years of age;

Second, knowingly;

Third, permitted;

[Fourth, **physical/sexual** abuse;

Fifth, of the child.]

**OR**

First, a **parent/guardian/(person having custody/control)** of a child under 18 years of age;

Second, knowingly;

Third, permitted;

Fourth, the child to be present in a place where [Specify Controlled Dangerous Substance] a controlled dangerous substance was (being manufactured)/(attempted to be manufactured);

[Specify Controlled Dangerous Substance] is a controlled dangerous substance.

**OR**

First, a **parent/guardian/(person having custody/control)** of a child under 18 years of age;

Second, knowingly;

Third, permitted;

Fourth, the child to be present in a vehicle operated by a person who was impaired by or under the influence of alcohol/(an intoxicating substance);

Fifth, and the **parent/guardian/(person having custody/control)** of the child knew or reasonably should have known that the operator of the vehicle was impaired by or under the influence of alcohol/(an intoxicating substance).

**OR**

First, a **parent/guardian/(person having custody/control)** of a child under 18 years of age;

[Second, was the **driver/operator/(person in actual physical control of a vehicle)**;

Third, who [specify violation of 47 O.S. 2011, 11-902, *e.g.*, was under the influence of alcohol or an intoxicating substance];

Fourth, while (**transporting the child/children**)/(**having the child/children in the vehicle**)).

No person may be convicted of child endangerment if that person had a reasonable apprehension that any action to **(stop the physical/sexual abuse)/(deny permission for the child to be in the vehicle with an intoxicated person)** would result in substantial bodily harm to the person or the child.

It is the burden of the State to prove beyond a reasonable doubt that the defendant did not have such reasonable apprehension. If you find that the State has failed to sustain that burden, then the defendant must be found not guilty.

OUJI-CR 4-40C

**Abandonment of a child -**

A willful refusal or failure to adequately provide for a child, and not a mere failure on account of inability.

References: *Bingham v. State*, 1971 OK CR 322, ¶ 9, 488 P.2d 603, 604; *Rowden v. State*, 1964 OK CR 120, ¶ 11, 397 P.2d 515, 517.

**Child -**

Any person under eighteen years of age.

**Child Abuse -**

**Willful/Malicious (harm)/(threatened harm)/(failure to protect from (harm)/(threatened harm))** to the health, safety, or welfare of a child by a person responsible for the child's health, safety, or welfare.

**Willfully/Maliciously injuring/torturing/maiming** a child under the age of eighteen.

Reference: 21 O.S. 2021, § 843.5(O) (1)

**Child Sexual Abuse -**

The **willful/malicious** sexual abuse of a child under eighteen (18) years of age by a person responsible for a child's health, safety or welfare and includes, but is not limited to: **(sexual intercourse)/(penetration of the vagina or anus, however slight, by an inanimate object or any part of the human body not amounting to sexual intercourse)/sodomy/incest/(a lewd act/proposal)**.

Reference: 21 O.S. 2021, § 843.5(O)(3).

This definition is to be used only with OUJI-CR 4-40B *supra* for child endangerment.

**Harm/(Threatened Harm) to the Health or Safety of a Child -**

Any **real/threatened physical/mental/emotional injury/damage** to the **body/mind** that is not accidental.

Reference: 10A O.S. 2021, § 1-1-105(2)(a).

**Incest -**

**Marrying/(Committing adultery)/Fornicating** with a child by a person responsible for the health, safety or welfare of a child.

Reference: 21 O.S. 2021, § 843.5(O)(9).

**Knowingly -**

With personal awareness of the facts..

Reference: 21 O.S. 2021, § 96.

**Lewd Act or Proposal -**

**(Making any oral/written/electronic/computer-generated lewd/indecent proposal to a child for the child to have unlawful sexual relations/intercourse with any person)/((Looking upon)/Touching/Mauling/Feeling the body/(private parts of a child) (in a lewd/lascivious manner)/(for the purpose of sexual gratification)/(Asking/Inviting/Enticing/Persuading any child to go alone with any person to a secluded/remote/secret place for a lewd/lascivious purpose)/(Urinating/Defecating upon a child)/(Causing/Forcing/Requiring a child to defecate/urinate upon the body/(private parts) of another person for the purpose of sexual gratification)/(Ejaculating upon/(in the presence of) a child/(Causing/Exposing/Forcing/Requiring a child to look upon the body/(private parts of another person) for the purpose of sexual gratification)/(Causing/Forcing/Requiring any child to view any (obscene materials)/(child pornography)/(materials deemed harmful to minors)/(Causing/Exposing/Forcing/Requiring a child to look upon sexual acts performed in the presence of the child for the purpose of sexual gratification)/(Causing/Forcing/Requiring a child to touch/feel the body/(private parts) of the child/(another person) for the purpose of sexual gratification).**

Reference: 21 O.S. 2021, § 843.5(O)(10).

#### **Maiming -**

Infliction on another of a physical injury that disables or disfigures or seriously diminishes physical vigor, performed with the intent to cause any injury.

#### **Malicious -**

The term imports a wish to vex, annoy or injure another person.

Reference: 21 O.S. 2021, § 95.

#### **Person Responsible for a Child's Health, Safety or Welfare -**

**A parent/(legal guardian)/custodian/(foster parent)/(a person eighteen (18) years of age or older with whom the child's parent cohabitates, who is at least three (3) years older than the child)/(a person eighteen (18) years of age or older residing in the home of the child, who is at least three (3) years older than the child)/(an owner/operator/agent/employee/volunteer of a public/private [residential home/institution/facility]/[day treatment program] that the child attended)/(an owner/operator/employee/volunteer of a child care facility that the child attended)/(an intimate partner of the parent of the child)/(a person who has voluntarily accepted responsibility for the care or supervision of the child).**

Reference: 21 O.S. 2021, § 843.5(O) (12).

#### **Permit -**

To authorize or allow for the care of the child by an individual when the person authorizing or allowing such care knew or reasonably should have known that the child would be placed at risk of **abuse/neglect/(sexual abuse)/(sexual exploitation).**

Reference: 21 O.S. 2021, § 843.5 (O(11)).

#### **Procure -**

To induce or bring about.

References: Webster's Third New International Dictionary 1809 (2002); Black's Law Dictionary 1327 (9th ed. 2009).

### **Sexual Intercourse -**

The actual penetration, however slight, of the vagina or anus by the penis.

Reference: 21 O.S. 2021, § 843.5(O(13).

### **Sodomy -**

Penetration, however slight, of the **(mouth of the child by a penis)/(vagina of a person responsible for a child's health, safety or welfare, by the mouth of a child)/(mouth of the person responsible for a child's health, safety or welfare by the penis of the child)/(vagina of the child by the mouth of the person responsible for a child's health, safety or welfare).**

Reference: 21 O.S. 2021, § 843.5(O(13).

### **Torture -**

Infliction of either great physical pain or extreme mental cruelty.

Reference: *Berget v. State*, 1991 OK CR 121, ¶ 31, 824 P.2d 364, 373; The Random House Dictionary (2d ed. 1988). *But see Atterberry v. State*, 1986 OK CR 186, ¶ 9, 731 P.2d 420, 423 (child abuse statute did not prohibit "threatened harm" or infliction of a "mental injury").

### **Unreasonable Force -**

**More than that ordinarily used as a means of discipline.**

Reference: 21 O.S. 2021, § 844.

### **Willful -**

Purposeful. "Willful" is a willingness to commit the act or omission referred to, but does not require any intent to violate the law or to acquire any advantage.

References: 21 O.S. 2021, § 92. *Tarver v. State*, 1982 OK CR 156, ¶¶ 12, 13, 651 P.2d 1332, 1334.

OUJI-CR 4-40D  
(2022 Supp.)

No person may be convicted of failure to pay child support unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, without lawful excuse;

Third, delinquent in child support payments;

Fourth, for **(more than \$5,000)/(one year or more)**;

Fifth, that **he/she** was obligated by lawful order to make.

OUJI-CR 4-41  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of leaving the State to avoid child support unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the defendant left the State of Oklahoma;

Second, to avoid providing necessary **food/clothing/ shelter/(court-ordered monetary child support)/(medical attention)** for a child;

Third, for whom the defendant owes a duty to provide.

[The duty to provide medical attention means that the person must provide medical treatment in the manner and on the occasions that an ordinarily prudent person, who is concerned for the welfare of a child, would provide. A person is not liable for failing to provide medical attention for every minor or trivial complaint that a child may have.]

OUJI-CR 4-42  
(2000 Supp.)



**No person may be convicted of neglect of a drug/alcohol dependent child** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, a parent with legal custody of a **drug/alcohol** dependent child;

Second, **(willfully omitted)/(without having made a reasonable effort failed)**;

Third, to provide for the treatment of the child in the manner and on the occasions that an ordinarily prudent person, who was concerned for the welfare of a child, would have provided.

OUJI-CR 4-43  
(2000 Supp.)

No person may be convicted of violating a child custody order unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, a **parent/person**;

Second, knowingly;

Third, violated an order of an Oklahoma court granting custody of a child under the age of eighteen years to any **person/agency/institution**;

Fourth, with the intent to deprive that **person/agency/institution** of the custody of the child.

OUJI-CR 4-44  
(2000 Supp.)

A person is justified in violating a child custody order if

First, **he/she** reasonably believed that doing so was necessary to protect the child from physical, mental, or emotional danger to the child; and

Second, **he/she** notified the local law enforcement agency nearest to the location where the custodian of the child resided.

It is the burden of the State to prove beyond a reasonable doubt that the defendant was not justified in violating a child custody order. If you find that the State has failed to sustain that burden, then the defendant must be found not guilty.

OUII-CR 4-45

(2000 Supp.)

No person may be convicted of contributing to the delinquency of a minor unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **knowingly/willfully**;

Second, **caused/aided/abetted/encouraged**;

Third, a child under eighteen (18) years old;

Fourth, to **be/become/remain** a **delinquent/runaway** child.

OUJI-CR 4-46  
(2000 Supp.)

No person may be convicted of contributing to the commission of a felony by a minor unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **knowingly/willfully**;

Second, **caused/aided/abetted/encouraged**;

Third, a child under eighteen (18) years old;

Fourth, to **commit/(participate in committing)** the following **act(s)** that would be a felony if committed by an adult: [**Specify Felony**].

OUII-CR 4-47  
(2000 Supp.)

No person may be convicted of encouraging street gang activity unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **knowingly/willfully**;

Second, **caused/aided/abetted/encouraged/solicited/ recruited**;

Third, a child under eighteen (18) years old;

Fourth, to **participate/join/associate** with any criminal street **gang/(gang member)**;

Fifth, for the purpose of committing [**Specify Alleged Criminal Act(s)**].

OUII-CR 4-48

No person may be convicted of encouraging a minor to commit a drug-related crime unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **knowingly/intentionally/willfully**;

Second, **caused/aided/abetted/encouraged**;

Third, a child under eighteen (18) years old;

Fourth, to **[Specify the Drug-Related Crime(s) Listed in 21 O.S. 1991, § 856.1]**.

OUJI-CR 4-49

No person may be convicted of encouraging a minor to be in need of supervision unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, knowingly;

Second, willfully;

[Third, **caused/aided/abetted/encouraged**;

Fourth, a child under eighteen (18) years old;

Fifth, to be **(in need of supervision)/deprived**].

[Third, contributed to the **(need of supervision)/deprivation**;

Fourth, of a child under eighteen (18) years old].

OUJI-CR 4-50



Child in Need of Supervision - A child under 18 years old who: **[Select Appropriate Language]**

[has repeatedly disobeyed reasonable and lawful commands or directives of **his/her parent/(legal guardian)/custodian**].

[is willfully and voluntarily absent from his home without the consent of **his/her parent/(legal guardian)/custodian** for a substantial length of time or does not intend to return].

[is subject to compulsory school attendance and is willfully and voluntarily absent from school for **(fifteen (15) or more days/(parts of days) within a semester)/(four (4) or more days/(parts of days) within a four-week period)** without a valid excuse as defined by the local school boards].

Reference: 10 O.S. Supp. 1995, § 7001-1.3(3).

Criminal Street Gang - Any ongoing **organization/association/ group of 5 or more persons**) that specifically **promoted/sponsored/ (assisted in)/(participated in)** and required as a condition of **membership/(continued membership)** the commission of **[Specify the Criminal Act(s) Listed in 21 O.S. 1991, § 856(F)]**.

Reference: 21 O.S. 1991, § 856(F).

Delinquent Child - A child under 18 years old who has violated any criminal law or has **[Specify the Delinquent Act(s) Listed in 21 O.S. 1991, § 857(4)]**.

Reference: 21 O.S. 1991, § 857(4).

Deprived Child - A child under 18 years old who: **[Select Appropriate Language]**

[is for any reason **destitute/homeless/abandoned**].

[does not have the proper parental **care/guardianship** or whose home is an unfit place for the child because of the **neglect/cruelty/depravity of his parents/(legal guardian)/(person in whose care the child is)**].

[is a child in need of special care and treatment because of his physical or mental condition including a child born in a condition of dependence on a controlled dangerous substance, and his **parents/(legal guardian)/custodian** is unable or willfully fails to provide special care and treatment].

[is a handicapped child deprived of the **(nutrition necessary to sustain life)/ (medical treatment necessary to remedy/relieve a life-threatening medical condition in order to cause/allow the death of the child if the nutrition/(medical treatment)** is generally provided to similarly situated non-handicapped or handicapped children].

[is subject to compulsory school attendance and, due to improper parental care and guardianship, is absent from school for **(fifteen (15) or more days/(parts of days) within a semester)/(four (4) or more days/(parts of days) within a four-week period)** without a valid excuse as defined by the local school boards].

Reference: 10 O.S. Supp. 1995, § 7001-1.3(4).

Encourage - In addition to the usual meaning of the word, includes a willful and intentional neglect to do what would directly tend to prevent an act of delinquency by a child under 18 years old, when a person was able to do so.

Reference: 21 O.S. 1991, § 857(3).

Knowingly - With personal awareness of the facts.

Reference: 21 O.S. 1991, § 96.

Willful - Purposeful. "Willful" does not require any intent to violate the law, or to injure another, or to acquire any advantage. It involves simply a willingness to commit the act or omission referred to.

References: 21 O.S. 1991, § 92. Tarver v. State, 651 P.2d 1332, 1334 (Okl. Cr. 1982).

OUJI-CR 4-51

No person may be convicted of procuring a minor for the purpose of **prostitution/(any lewd or indecent act)** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

[First, **offered/(offered to secure)** a child under eighteen (18) years old;

Second, for the purpose of **prostitution/(any lewd or indecent act)]**.

[First, **procured/(offered to procure) [a place for]** a child under eighteen (18) years old;

Second, **for/in** a house of **prostitution/(place where prostitution is practiced)]**.

[First, **received/(offered/agreed to receive)** a child under eighteen (18) years old;

Second, into any **house/place/building/structure/vehicle /trailer/conveyance**;

Third, for the purpose of **prostitution/lewdness/ assignation]**.

[First, permitted a person to remain;

Second, in any **house/place/building/structure/vehicle /trailer/conveyance**;

Third, for the purpose of **prostitution/lewdness/assignation** with a child under eighteen (18) years old].

[First, **directed/took/transported/(offered/agreed to take/transport)/ (aid/assist in transporting)** a child under eighteen (18) years old;

Second, to any **house/place/building/structure/vehicle / trailer/conveyance/ (other person)**;

Third, **(with knowledge)/(having reasonable cause to believe)** that;

Fourth, the purpose of the **directing/taking/transporting** was **prostitution/lewdness/assignation]**.

OUII-CR 4-52

First, knowingly permitted;

Second, in any **house/building/room/premises/conveyance (under the defendant's control)/(of which the defendant has possession)**;

Third, a person to **offer/(offer to secure)** a child under eighteen (18) years old;

Fourth, for the purpose of **prostitution/(any lewd or indecent act)**].

First, knowingly permitted;

Second, in any **house/building/room/premises/conveyance (under the defendant's control)/(of which the defendant has possession)**;

Third, a person to **procure/(offer to procure) [a place for]** a child under eighteen (18) years old;

Fourth, **for/in** a house of **prostitution/(place where prostitution is practiced)**].

First, knowingly permitted;

Second, in any **house/building/room/premises/conveyance (under the defendant's control)/(of which the defendant has possession)**;

Third, a person to **receive/(offer/agree to receive)** a child under eighteen (18) years old;

Fourth, into any **house/place/building/structure/vehicle / trailer/conveyance**;

Fifth, for the purpose of **prostitution/lewdness/ assignation**].

First, knowingly permitted;

Second, in any **house/building/room/premises/conveyance (under the defendant's control)/(of which the defendant has possession)**;

Third, a person to permit any person to remain;

Fourth, in any **house/place/building/ structure/vehicle/trailer/conveyance**;

Fifth, for the purpose of **prostitution/lewdness/ assignation** with a child under eighteen (18) years old].

First, knowingly permitted;

Second, in any **house/building/room/premises/conveyance (under the defendant's control)/(of which the defendant has possession)**;

Third, a person to **direct/take/transport/(offer/agree to take/transport)/ (aid/assist in transporting)** a child under eighteen (18) years old;

Fourth, to any **house/place/building/structure/vehicle /trailer/conveyance/ (other person)**;

Fifth, **(with the person's knowledge)/(the person having reasonable cause to believe)** that;

Sixth, the purpose of the **directing/taking/transporting** was **prostitution/lewdness/assignation**].



No person may be convicted of keeping a minor for prostitution unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

[First], by **promise/threats/violence/(any device or scheme)**;

Second, **caused/induced/persuaded/encouraged** a child under eighteen (18) years old;

Third, to **(engage in prostitution)/(continue to engage in prostitution)/ (become/remain in a (house of prostitution)/(place where prostitution is practiced))**].

[First], **kept/held/detained/restrained/(compelled against his/her will)** a child under eighteen (18) years old;

Second, to **(engage in the practice of prostitution)/(be in a (house of prostitution)/(place where prostitution is practiced))**].

[First], directly or indirectly **(kept/held/detained/restrained/compelled)/( attempted to keep/hold/detain/restrain/compel)** a child under eighteen (18) years old;

Second, to **(engage in the practice of prostitution)/(be in a (house of prostitution)/(place where prostitution is practiced/allowed))**;

Third, for the purpose of compelling the child to directly or indirectly **pay/liquidate/cancel any debt/ dues/obligations incurred/(said to have been incurred)** by the child].

OUJI-CR 4-54

No person may be convicted of permitting the keeping of a minor for prostitution unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, knowingly permitted;

Second, in any **house/building/room/tent/lot/premises (under the defendant's control)/(of which the defendant has possession)**;

Third, a person by **promise/threats/violence/(any device or scheme)**;

Fourth, to **cause/induce/persuade/encourage** a child under eighteen (18) years old;

Fifth, to **(engage in prostitution)/(continue to engage in prostitution)/ (become/remain in a (house of prostitution)/(place where prostitution is practiced))**].

First, knowingly permitted;

Second, in any **house/building/room/tent/lot/premises (under the defendant's control)/(of which the defendant has possession)**;

Third, a person to **keep/hold/detain/restrain/(compel against his/her will)** a child under eighteen (18) years old;

Fourth, to **(engage in the practice of prostitution)/(be in a (house of prostitution)/(place where prostitution is practiced))**].

First, knowingly permitted;

Second, in any **house/building/room/tent/lot/premises (under the defendant's control)/(of which the defendant has possession)**;

Third, a person directly or indirectly to **keep/hold/detain/restrain/compel/ (attempt to keep/hold/detain/restrain/compel)** a child under eighteen (18) years old;

Fourth, to **(engage in the practice of prostitution)/(be in a (house of prostitution)/(place where prostitution is practiced/allowed))**;

Fifth, for the purpose of compelling the child to directly or indirectly **pay/liquidate/cancel any debt/ dues/obligations incurred/(said to have been incurred)** by the child].

OUI-CR 4-55

Anal Intercourse - Contact between human beings of the genital organs of one and the anus of another.

Reference: 21 O.S. Supp. 1995, § 1030.

Assignment - An appointment for the purpose of sexual intercourse.

Reference: Random House Dictionary (2nd ed. 1987).

Cunnilingus - Any act of oral stimulation of the vulva or clitoris.

Reference: 21 O.S. Supp. 1995, § 1030.

Fellatio - Any act of oral stimulation of the penis.

Reference: 21 O.S. Supp. 1995, § 1030.

Lewdness - Any lascivious, lustful or licentious conduct.

The **giving/receiving** of the body for **(sexual intercourse)/fellatio/cunnilingus/ masturbation/(anal intercourse)/lewdness** with any person not **his/her** spouse.

Any act in furtherance of such conduct.

Any **appointment/engagement** for prostitution.

Reference: 21 O.S. Supp. 1995, § 1030.

Masturbation - Stimulation of the genital organs by manual or other bodily contact exclusive of sexual intercourse.

Reference: 21 O.S. Supp. 1995, § 1030.

Prostitution - The **(giving/receiving of the body)/(making of any appointment/ engagement)** for **(sexual intercourse)/fellatio/cunnilingus/masturbation/(anal intercourse)/lewdness** in exchange for payment.

Reference: 21 O.S. Supp. 1995, § 1030.

OUII-CR 4-56



No person may be convicted of loitering by a person required to register as a sex offender unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **[Name of Defendant]** was convicted of a crime that required **him/her** to register as a sex offender; and

Second, while required to register as a sex offender **he/she** knowingly;

Third, was loitering within 500 feet of a/an **[elementary/(junior high)/high school]/[permitted/licensed child care facility]/park/playground**.

Third, was loitering within 1,000 feet of the residence of the victim of the sex crime for which **[Name of Defendant]** was convicted.

Loitering means to stand around or move slowly about; to spend time idly; to saunter; to delay; to linger; to lag behind.

**[Loitering does not include:**

**(A (custodial parent)/(legal guardian) of a student enrolled at the school/(child care facility) who is enrolling/delivering/retrieving the student at the school/(child care facility) [during regular school/facility hours]/[for (school-sanctioned)/(child-care-facility-sanctioned) extracurricular activities].**

**(A person receiving medical treatment at a hospital/(a facility certified/ licensed by the State of Oklahoma to provide medical services), unless it is any form of psychological, social or rehabilitative counseling services or treatment programs for sex offenders).**

**(A person attending a recognized church/(religious denomination) for worship if he/she has notified the religious leader of his/her status as a registered sex offender and he/she was granted written permission by the religious leader).]**

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Statutory Authority: 21 O.S. Supp. 2019, § 1125.

OUJI-CR 4-56A  
(2019 Supp.)

No person may be convicted of entering a park by **a/an aggravated/ habitual** sex offender unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, [Name of Defendant] had been designated as **a/an aggravated/ habitual** sex offender ; and

Second, **he/she** knowingly;

Third, entered a park.

First, [Name of Defendant] was convicted of an offense in another **state/ country** that if committed in Oklahoma would designate [Name of Defendant] as **a/an aggravated/habitual** sex offender ; and

Second, **he/she** knowingly;

Third, entered a park.

A park is any outdoor public area specifically designated as being used for recreational purposes that is operated/supported in whole or in part by a **(homeowners' association)/city/town/county/state/(federal/tribal governmental authority)**.

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Statutory Authority: 21 O.S. Supp. 2017, § 1125(A)(2).

OUJI-CR 4-56B  
(2018 Supp.)

A **person/(human being)** shall include an unborn child. An unborn child means an unborn offspring of human beings from the moment of conception, through pregnancy, and until live birth.

OUJI-CR 4-57  
(2018 Supp.)

No person shall be guilty of:

(murder in the first degree of)

(murder in the second degree of)

(manslaughter in the first degree of)

(manslaughter in the second degree of)

(shooting with intent to kill)

(use of a vehicle to facilitate the discharge of a **firearm/crossbow/weapon** in the conscious disregard for the safety of)

(assault and battery with a deadly weapon upon)

(willfully killing)

an unborn child if:

[The acts that caused the death of the unborn child were committed during a legal abortion to which the pregnant woman consented.]

[The acts were committed pursuant to the usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.]

OUII-CR 4-57A  
(2018 Supp.)

INSTRUCTION No. \_\_\_\_\_

Under no circumstances shall the mother of the unborn child be convicted for causing the death of the unborn child unless the mother has committed a crime that caused the death of the unborn child.

OUJI-CR 4-57B  
(2018 Supp.)

INSTRUCTION No. \_\_\_\_\_

OUJI-CR 4-58  
(2018 Supp.)

No person may be convicted of trafficking in children unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, [Name of Defendant] knowingly **accepted/solicited/offered/paid/ transferred** any compensation in **money/property/(anything of value)**;

Second, in connection with the **(acquisition/transfer of the legal/physical custody)/adoption** of a minor child.

\_\_\_\_\_  
Statutory Authority: 21 O.S. 2011, § 866(A)(1)(a); 10 O.S. Supp. 2019, § 7505-3.2.

OUJI-CR 4-58A  
(2019 Supp.)

[**Name of Defendant**] has asserted as a defense to the charge of trafficking in children that the following expenses have been approved by the Court **and/or** authorized by law: [**Specify the applicable costs and expenses ordered by the Court or provided in 10 O.S. 2019, § 7505-3.2**]. The State has the burden of proving beyond a reasonable doubt that the expenses were not approved by the Court **and/or** were not authorized by law.

OUII-CR 4-58A-1  
(2019 Supp.)



No **person/organization** may be convicted of trafficking in children unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, [**Name of Defendant**] knowingly **accepted/solicited** any compensation in **money/property/(anything of value)**;

Second, for services **performed/rendered/(purported to be performed)** to **facilitate/assist** in the **adoption/(foster care placement)** of a minor child.

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Statutory Authority: 21 O.S. 2011, § 866(A)(1)(b).

OUJI-CR 4-58B  
(2019 Supp.)

**[Name of Defendant]** has asserted as a defense to the charge of trafficking in children that **he/she/it** was **(the Department of Human Services)/( a child-placing agency licensed in Oklahoma under the Oklahoma Child Care Facilities Licensing Act)/(an attorney authorized to practice law in Oklahoma)/(an attorney licensed to practice law in a state other than Oklahoma who is working with an attorney licensed in Oklahoma)/(an out-of-state licensed child-placing agency that was working with a child-placing agency licensed in Oklahoma which was providing [adoption services]/[services necessary for placing a child in an adoptive arrangement])**. The State has the burden of proving beyond a reasonable doubt that **[Name of Defendant]** was not **(the Department of Human Services)/( a child-placing agency licensed in Oklahoma under the Oklahoma Child Care Facilities Licensing Act)/(an attorney authorized to practice law in Oklahoma)/(an attorney licensed to practice law in a state other than Oklahoma who is working with an attorney licensed in Oklahoma)/(an out-of-state licensed child-placing agency that was working with a child-placing agency licensed in Oklahoma which was providing [adoption services]/[services necessary for placing a child in an adoptive arrangement])**.

OUII-CR 4-58B-1  
(2019 Supp.)

No person may be convicted of trafficking in children unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, [Name of Defendant] knowingly **brought/(caused to be brought)/sent/(caused to be sent)** a child **into/(out of)** Oklahoma;

Second, for the purpose of placing the child **(in a foster home)/(for adoption)**; and

Third, refused afterwards to comply upon request with the Interstate Compact on the Placement of Children.

---

Statutory Authority: 21 O.S. 2011, § 866(A)(1)(c).

OUII-CR 4-58C  
(2019 Supp.)

**[Name of Defendant]** has asserted as a defense to the charge of trafficking in children that **he/she (was the parent/guardian of the child)/(brought the child into Oklahoma for the purpose of adopting the child into [Name of Defendant]'s own family)**. The State has the burden of proving beyond a reasonable doubt that **[Name of Defendant] (was not the parent/guardian of the child)/(did not bring the child into Oklahoma for the purpose of adopting the child into [Name of Defendant]'s own family)**.

OUJI-CR 4-58C-1  
(2019 Supp.)

No person may be convicted of trafficking in children unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, [Name of Defendant] is the birth parent of a child; and

Second, [Name of Defendant] knowingly **solicited/received money/(anything of value)** for expenses related to the placement of a child for the purpose of an adoption;

Third, when [Name of Defendant] had no intent to consent to eventual adoption.

---

Statutory Authority: 21 O.S. 2011, § 866(A)(1)(d).

OUII-CR 4-58D  
(2019 Supp.)

No person may be convicted of trafficking in children unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, [Name of Defendant] is a woman who knowingly **solicited/received money/(anything of value)** for expenses related to the placement of a child for the purpose of an adoption; and

Second, [Name of Defendant] held herself out to be pregnant and offered to place a child upon birth for adoption;

Third, when she knew she was not pregnant.

---

Statutory Authority: 21 O.S. 2011, § 866(A)(1)(e).

OUJI-CR 4-58E  
(2019 Supp.)

No person may be convicted of trafficking in children unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, [Name of Defendant] was a/an (birth parent)/(child-placing agency)/attorney;

Second, who knowingly received money/(anything of value) for expenses related to the placement of a child for the purpose of an adoption;

Third, and [Name of Defendant] did not disclose to each prospective adoptive parent, child-placing agency, and attorney the receipt of the money/(anything of value) immediately upon receipt.

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Statutory Authority: 21 O.S. 2011, § 866(A)(1)(f)(1).

OUJI-CR 4-58F-1  
(2019 Supp.)

No person may be convicted of trafficking in children unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, [Name of Defendant] was **a/an (birth parent)/(child-placing agency)/attorney**;

Second, who knowingly **received/solicited money/(anything of value)** for expenses related to the placement of a child for the purpose of the adoption of one child;

Third, from more than one prospective adoptive family.

---

Statutory Authority: 21 O.S. 2011, § 866(A)(1)(f)(2).

OUJI-CR 4-58F-2  
(2019 Supp.)



No person may be convicted of trafficking in children unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, [Name of Defendant] was not **(the Department of Human Services)/(a child-placing agency licensed in Oklahoma)/(an attorney authorized to practice law in Oklahoma)**; and

Second, [Name of Defendant] knowingly advertised for **(services for compensation to [assist with]/effect the placement of a child for adoption/[care in a foster home])/(legal services related to the adoption of children)**.

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Statutory Authority: 21 O.S. 2011, § 866(A)(1)(g).

OUJI-CR 4-58G  
(2019 Supp.)

No person may be convicted of trafficking in children unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, [Name of Defendant] was not (a child-placing agency licensed in Oklahoma)/(attorney authorized to practice law in Oklahoma); and

Second, [Name of Defendant] knowingly advertised for and solicited a pregnant woman to induce her to place her child upon birth for adoption.

---

Statutory Authority: 21 O.S. 2011, § 866(A)(1)(h).

OUJI-CR 4-58H  
(2019 Supp.)

INSTRUCTION No. \_\_\_\_\_

[**Name of Defendant**] has asserted as a defense to the charge of trafficking in children that [**Name of Defendant**] has received a favorable preplacement home study recommendation to locate a child into **his/her** own home and [**Name of Defendant**] has not offered any **money/(thing of value)** to induce the pregnant woman to place the child into **his/her** home other than the following expenses that have been approved by the Court **and/or** authorized by law: [**Specify the applicable costs and expenses ordered by the Court or provided in 10 O.S. 2017, § 7505-3.2**]. The State has the burden of proving beyond a reasonable doubt that the expenses were not approved by the Court **and/or** were not authorized by law.

OUII-CR 4-58H-1  
(2019 Supp.)

INSTRUCTION No. \_\_\_\_\_

The defendant is charged with **(murder/manslaughter in the first/ second degree)/(negligent homicide)** of **[name of alleged victim]** on **[date]** in **[name of county]** County, Oklahoma.

OUII-CR 4-59

(2000 Supp.)

No person may be convicted of **(murder/manslaughter in the first/second degree)/(negligent homicide)** unless **(his/her conduct)/(the conduct of another person for which he/she is criminally responsible)** caused the death of the person allegedly killed. A death is caused by the conduct if the conduct is a substantial factor in bringing about the death and the conduct is dangerous and threatens or destroys life. **[This conduct may be either an act or a failure to perform a legal duty to the deceased].**

OUJI-CR 4-60  
(2000 Supp.)

No person may be convicted of murder in the first degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the death of a human;

Second, the death was unlawful;

Third, the death was caused by the defendant;

Fourth, the death was caused with malice aforethought.

OUII-CR 4-61

INSTRUCTION No. \_\_\_\_\_

"Malice aforethought" means a deliberate intention to take away the life of a human being. As used in these instructions, "malice aforethought" does not mean hatred, spite or ill-will. The deliberate intent to take a human life must be formed before the act and must exist at the time a homicidal act is committed. No particular length of time is required for formation of this deliberate intent. The intent may have been formed instantly before commission of the act.

[If you find that **[Name of Defendant]** deliberately intended to kill **[Name of Intended Victim]**, and by mistake or accident killed **[Name of Actual Victim]**, the element of malice aforethought is satisfied even though **[Name of Defendant]** did not intend to kill **[Name of Actual Victim]**. In such a case, the law regards the intent as transferred from the original intended victim to the actual victim.]

OUJI-CR 4-62

INSTRUCTION No. \_\_\_\_\_

The external circumstances surrounding the commission of a homicidal act may be considered in finding whether or not deliberate intent existed in the mind of the defendant to take a human life. External circumstances include words, conduct, demeanor, motive, and all other circumstances connected with a homicidal act.

OUJI-CR 4-63



No person may be convicted of murder in the first degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the death of a human;

Second, the death occurred as a result of an act or event which happened in the defendant's **commission/(attempted commission)** of a/an

**[forcible rape]**

**[robbery with a dangerous weapon]**

**[kidnapping]**

**[escape from lawful custody]**<sup>1</sup>

**[eluding an officer]**

**[first-degree burglary/arson]**

**[murder of a person other than the deceased]**

**[shooting/discharge of a firearm/crossbow with intent to kill a person other than the deceased]**

**[intentional discharge of a firearm/[specify other deadly weapon] into a dwelling/(building used for business/public purposes)]**

**[unlawful distributing or dispensing of controlled dangerous substances/(synthetic controlled substances)]**

**[trafficking in illegal drugs];**

**[(manufacturing)/attempting to manufacture) a controlled dangerous substance)];**

Third, the elements of the crime of

**[forcible rape]**

**[robbery with a dangerous weapon]**

**[kidnapping]**

**[escape from lawful custody]** <sup>1</sup>

**[eluding an officer]**

**[first-degree burglary/arson]**

**[murder of a person other than the deceased]**

**[shooting/discharge of a firearm/crossbow with intent to kill a person other than the deceased]**

**[intentional discharge of a firearm/[specify other deadly weapon] into a dwelling/(building used for business/public purposes)]**

**[unlawful distributing or dispensing of controlled dangerous substances/(synthetic controlled substances)]**

**[trafficking in illegal drugs]**

**[(manufacturing)/(attempting to manufacture) a controlled dangerous substance]**

that the defendant is alleged to have been in the commission of are as follows:

**[Give Elements of Underlying Felony]**

The trial judge should give accomplice and/or coconspirator instructions where appropriate.

As a result of a 1996 amendment, the felony-murder statute, 21 O.S. 2011, § 701.7(B) covers not only deaths that were actually committed by the person charged with the underlying felony but also deaths that were committed by that person's intended victims, police officers and innocent bystanders. *Kinchion v. State*, 2003 OK CR 28, ¶ 6, 81 P.3d 681, 683.

<sup>1</sup> It must be emphasized that the Oklahoma statutes do not include as a specific crime "An Escape from Lawful Custody." This instruction is appropriate only when the defendant has escaped from a peace officer after being lawfully arrested or detained by such officer, 21 O.S. 2011, § 444, or where the escape is from a penal institution, 21 O.S. 2011, § 443. (See OUJI-CR 6-52 through 6-54.)

OUJI-CR 4-64  
(2018 Supp.)

A person is in the commission of

**[forcible rape]**

**[robbery with a dangerous weapon]**

**[kidnapping]**

**[escape from lawful custody]**

**[eluding an officer]**

**[first-degree burglary/arson]**

**[murder of a person other than the deceased]**

**[shooting/discharge of a firearm/crossbow with intent to kill a person other than the deceased]**

**[intentional discharge of a firearm/[specify other deadly weapon] into a dwelling/(building used for business/public purposes)]**

**[unlawful distributing or dispensing of controlled dangerous substances/synthetic controlled substances]**

**[trafficking in illegal drugs]**

**[(manufacturing)/(attempting to manufacture) a controlled dangerous substance)]**

when he/she is **(performing an act which is an inseparable part of)/(performing an act which is necessary in order to complete the course of conduct constituting)/(fleeing from the immediate scene of) a/an**

**[forcible rape]**

**[robbery with a dangerous weapon]**

**[kidnapping]**

**[escape from lawful custody]**

**[eluding an officer]**

**[first-degree burglary/arson]**

**[murder of a person other than the deceased]**

**[shooting/discharge of a firearm/crossbow with intent to kill a person other than the deceased]**

**[intentional discharge of a firearm/[specify other deadly weapon] into a dwelling/(building used for business/public purposes)]**

**[unlawful distributing or dispensing of controlled dangerous substances/synthetic controlled substances]**

**[trafficking in illegal drugs]**

**[(manufacturing)/(attempting to manufacture) a controlled dangerous substance)] .**

OUJI-CR 4-65  
(2018 Supp.)

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of murder in the first degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the death of a child under the age of eighteen;

Second, the death resulted from the willful or malicious **injuring/ torturing/maiming/(using of unreasonable force)**;

[Third, by the defendant.]

[Third, which was willfully **caused/procured**;

Fourth, by the defendant.]

[Third, which was willfully permitted by the defendant;

Fourth, who was responsible for the child's health or safety.]

OUII-CR 4-65A  
(2003 Supp.)

INSTRUCTION No. \_\_\_\_\_

If you find beyond a reasonable doubt that the defendant committed the crime of **[Specify Crime Charged]**, you shall return a verdict of guilty by marking the Verdict Form appropriately. If you have a reasonable doubt of the defendant's guilt to the charge of **[Specify Crime Charged]** or if you find that the State has failed to prove each element of **[Specify Crime Charged]** beyond a reasonable doubt, you shall return a verdict of not guilty by marking the Verdict Form appropriately. The issue of punishment is not before you at this time.

OUJI-CR 4-66  
(2000 Supp.)

THE STATE OF OKLAHOMA,

Plaintiff,

vs

JOHN DOE,

Defendant.

Defendant is:

\_\_\_\_\_ Guilty.

\_\_\_\_\_ Not Guilty.

\_\_\_\_\_  
FOREPERSON

OUJI-CR 4-67  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

The defendant in this case has been found guilty by you, the jury, of the offense of murder in the first degree. It is now your duty to determine the penalty to be imposed for this offense.

Under the law of the State of Oklahoma, every person found guilty of murder in the first degree shall be punished by death, or imprisonment for life without the possibility of parole, or imprisonment for life with the possibility of parole.

OUII-CR 4-68  
(2005 Supp.)



You must first determine if the Defendant is mentally retarded as it is defined below. This must be done before deciding what sentence to impose. A Defendant who is mentally retarded cannot be sentenced to death. It is the Defendant's burden to prove by a preponderance of the evidence that **he/she** is mentally retarded. Preponderance of the evidence means more probable than not.

A person is mentally retarded if **he/she** has significantly subaverage general intellectual functioning along with significant limitations in adaptive functioning.

"Significantly subaverage general intellectual functioning" means an intelligence quotient of seventy (70) or below. An intelligence quotient of seventy (70) or below on an individually administered, scientifically recognized standard intelligence quotient test administered by a licensed psychiatrist or psychologist is evidence of significantly subaverage general intellectual functioning. A score on an intelligence quotient test may differ from a person's actual intelligence quotient because of the possibility of measurement error, and you must take into account the standard error of measurement for the test administered in determining the intelligence quotient. "Significant limitations in adaptive functioning" means significant limitations in two or more of the following adaptive skill areas; communication, self-care, home living, social skills, community use, self-direction, health, safety, functional academics, leisure skills and work skills.

The onset of the defendant's mental retardation must have been noticeable before the age of eighteen (18) years; however, the intelligence quotient test does not have to have been administered before the age of eighteen (18) years.

In reaching your decision, you must determine:

- (1) Does the Defendant have an intelligence quotient of seventy (70) or below?
- (2) Does the Defendant have significant limitations in adaptive functions in at least two of the following skill areas: communication; self-care; home living; social skills; community use; self-direction; health and safety; functional academics; leisure skills; and work skills?
- (3) Is there evidence that the Defendant's onset of the mental retardation was noticeable before the Defendant was eighteen (18) years of age?

If you unanimously find by a preponderance of the evidence that the answer to each of these questions is yes, then you must find that the Defendant is mentally retarded and so indicate on your verdict form. You must then decide whether the Defendant shall be sentenced to life imprisonment or life imprisonment without the possibility of parole and so indicate on your verdict form.

If you unanimously find that the answer to any of these questions is no, then you must find that the Defendant is not mentally retarded and so indicate on your verdict form. If you either unanimously find that the Defendant is not mentally retarded or you are unable to reach a unanimous decision, you must then consider the remainder of the instructions relating to the death penalty and decide whether the defendant shall be sentenced to life imprisonment, life imprisonment without the possibility of parole, or death.

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Statutory Authority: 21 O.S. 2011, § 701.10b(D)

This instruction should be used if the defendant has raised mental retardation as a bar to a death sentence in accordance with ¶ D of 21 O.S. 2011, § 701.10b and has requested submission of the issue of mental retardation to the jury during the sentencing phase. The verdict form in OUJI-CR 4-87A should be used with this instruction.

If the jury either determines that the defendant is not mentally retarded or is unable to reach a unanimous decision on mental

retardation, the judge should instruct the jury that it may consider evidence of mental retardation as a mitigating factor. See 21 O.S. 2011, § 701.10b(G); OUJI-CR 4-79, *infra*.

The Supreme Court in *Hall v. Florida*, 134 S.Ct. 1986, 1990 (2014) reversed a death sentence because Florida applied a strict IQ test score cutoff of 70 without taking into account the standard error of measurement on the IQ test. *See id.* at 1994 ("That strict IQ test score of 70 is the issue in this case.").

OUJI-CR 4-68A  
(2014 Supp.)

INSTRUCTION No. \_\_\_\_\_

In the sentencing stage of this trial, the State has filed a document called a Bill of Particulars. In this Bill of Particulars, the State alleges the defendant should be punished by death, because of the following aggravating circumstances:

In the sentencing stage of this trial, the State has filed a document called a Bill of Particulars. In this Bill of Particulars, the State alleges the defendant should be punished by death, because of the following aggravating circumstances:

OUII-CR 4-69  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

The defendant has entered a plea of not guilty to the allegations of this Bill of Particulars, which casts on the State the burden of proving beyond a reasonable doubt the existence of one or more aggravating circumstances alleged in this Bill of Particulars.

This Bill of Particulars simply states the grounds upon which the State seeks imposition of the death penalty. It sets forth in a formal way the aggravating **circumstance(s)** of which the defendant is accused. The Bill of Particulars is not evidence that any aggravating **circumstance(s) exist(s)**. You must not be influenced against the defendant by reason of the filing of this Bill of Particulars.

The defendant is presumed to be innocent of the allegations made against **him/her** in the Bill of Particulars. This presumption of innocence continues unless one or more of the aggravating circumstances is proven beyond a reasonable doubt. If, upon consideration of all the evidence, facts, and circumstances in the case, you have a reasonable doubt of the existence of each and every aggravating circumstance alleged in the Bill of Particulars, you must give **him/her** the benefit of that doubt and return a sentence of life imprisonment with the possibility of parole or life imprisonment without the possibility of parole.

OUII-CR 4-70  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

In determining whether a person found guilty of murder in the first degree shall be punished by death, imprisonment for life without the possibility of parole, or imprisonment for life with the possibility of parole, you are required to give individualized consideration to the defendant's degree of participation and focus on the defendant's individual culpability in the killing.

You are further instructed that you may not impose the death penalty unless you determine beyond a reasonable doubt that the defendant either: 1) killed a person, 2) attempted to kill a person, 3) intended a killing to take place, 4) intended the use of deadly force, or 5) was a major participant in the felony committed and was recklessly indifferent to human life.

OUJI-CR 4-71

(2000 Supp.)

You are instructed that, in arriving at your determination of punishment, you must first determine whether any one or more of the following aggravating circumstances exists beyond a reasonable doubt:

1. The defendant, prior to this sentencing proceeding, was convicted of a felony involving the use or threat of violence to the person;
2. During the commission of the murder, the defendant knowingly created a great risk of death to more than one person;
3. The person committed the murder for remuneration or the promise of remuneration or employed another to commit the murder for remuneration or the promise of remuneration;
4. The murder was especially heinous, atrocious, or cruel;
5. The murder was committed for the purpose of avoiding or preventing a lawful arrest or prosecution;
6. The murder was committed by a person while serving a sentence of imprisonment on conviction of a felony;
7. The victim of the murder was a peace officer or correctional employee of an institution under the control of the Department of Corrections, and such person was killed in performance of official duty; or
8. At the present time there exists a probability that the defendant will commit criminal acts of violence that would constitute a continuing threat to society.

OUII-CR 4-72

INSTRUCTION No. \_\_\_\_\_

The State has alleged that the murder was “especially heinous, atrocious, or cruel.” This aggravating circumstance is not established unless the State proves beyond a reasonable doubt:

First, that the murder was preceded by either torture of the victim or serious physical abuse of the victim; and

Second, that the facts and circumstances of this case establish that the murder was heinous, atrocious, or cruel.

You are instructed that the term “torture” means the infliction of either great physical anguish or extreme mental cruelty. You are further instructed that you cannot find that “serious physical abuse” or “great physical anguish” occurred unless you also find that the victim experienced conscious physical suffering prior to his/her death.

In addition, you are instructed that the term “heinous” means extremely wicked or shockingly evil; the term “atrocious” means outrageously wicked and vile; and the term “cruel” means pitiless, designed to inflict a high degree of pain, or utter indifference to or enjoyment of the suffering of others.

OUII-CR 4-73

INSTRUCTION No. \_\_\_\_\_

The State has alleged that there exists a probability that the defendant will commit future acts of violence that constitute a continuing threat to society. This aggravating circumstance is not established unless the State proved beyond a reasonable doubt:

First, that the defendant's behavior has demonstrated a threat to society; and

Second, a probability that this threat will continue to exist in the future.

OUII-CR 4-74  
(2000 Supp.)



INSTRUCTION No. \_\_\_\_\_

The State has alleged that "the murder was committed for the purpose of avoiding or preventing a lawful arrest or prosecution." This aggravating circumstance is not established unless the State has proved beyond a reasonable doubt that:

First, there was another crime separate and distinct from the murder; and

Second, the defendant committed the murder with the intent to avoid being arrested or prosecuted for that other crime.

OUJI-CR 4-75  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

Aggravating circumstances are those which increase the guilt or enormity of the offense. In determining which sentence you may impose in this case, you may consider only those aggravating circumstances set forth in these instructions.

Should you unanimously find that one or more aggravating circumstances existed beyond a reasonable doubt, you are authorized to consider imposing a sentence of death.

If you do not unanimously find beyond a reasonable doubt that one or more of the aggravating circumstances existed, you are prohibited from considering the penalty of death. In that event, the sentence must be imprisonment for life without the possibility of parole or imprisonment for life with the possibility of parole.

OUII-CR 4-76  
(2000 Supp.)

The State relies **[in part]** upon circumstantial evidence for proof of the aggravating **circumstance(s)** of **[Specify the Aggravating Circumstance(s) That Is/Are Applicable]** In order to warrant a finding of any aggravating circumstance or circumstances upon circumstantial evidence, each fact necessary to prove the existence of the circumstance must be established by the evidence beyond a reasonable doubt. All of the facts and circumstances, taken together, must establish to your satisfaction the existence of the aggravating **circumstance(s)** beyond a reasonable doubt.

OUJI-CR 4-77

INSTRUCTION No. \_\_\_\_\_

Mitigating circumstances are 1) circumstances that may extenuate or reduce the degree of moral culpability or blame, or 2) circumstances which in fairness, sympathy or mercy may lead you as jurors individually or collectively to decide against imposing the death penalty. The determination of what circumstances are mitigating is for you to resolve under the facts and circumstances of this case.

While all twelve jurors must unanimously agree that the State has established beyond a reasonable doubt the existence of at least one aggravating circumstance prior to consideration of the death penalty, unanimous agreement of jurors concerning mitigating circumstances is not required. In addition, mitigating circumstances do not have to be proved beyond a reasonable doubt in order for you to consider them.

OUII-CR 4-78

Evidence has been introduced as to the following mitigating circumstances:

**[the defendant did not have any significant history of prior criminal activity]**

**[the defendant acted under duress or under the domination of another person]**

**[the defendant's capacity to appreciate the criminality of his/her conduct or to conform his/her conduct to the requirements of law was impaired]**

**[the defendant was under the influence of mental/emotional disturbance]**

**[the victim was a willing participant in the defendant's conduct]**

**[the defendant acted under circumstances which tended to justify, excuse or reduce the crime]**

**[the defendant is likely to be rehabilitated]**

**[cooperation by the defendant with authorities]**

**[the defendant's age]**

**[the defendant's character]**

**[the defendant's emotional/family history]**

**[evidence of mental retardation]**

In addition, you may decide that other mitigating circumstances exist, and if so, you should consider those circumstances as well.

OUII-CR 4-79

INSTRUCTION No. \_\_\_\_\_

If you unanimously find that one or more of the aggravating circumstances existed beyond a reasonable doubt, the death penalty shall not be imposed unless you also unanimously find that any such aggravating circumstance or circumstances outweigh the finding of one or more mitigating circumstances. Even if you find that the aggravating **circumstance(s)** **outweigh(s)** the mitigating **circumstance(s)**, you may impose a sentence of imprisonment for life with the possibility of parole or imprisonment for life without the possibility of parole.

OUII-CR 4-80

INSTRUCTION No. \_\_\_\_\_

If you unanimously find that one or more of the aggravating circumstances existed beyond a reasonable doubt, the law requires that you reduce such findings to writing by stating specifically what aggravating **circumstance(s)** existed, if any. This finding must be made a part of your verdict.

You must indicate this finding by checking the box next to such aggravating **circumstance(s)** on the appropriate verdict form furnished you, and such verdict form must be signed by your foreperson.

The law does not require you to reduce to writing the mitigating **circumstance(s)** you find, if any.

OUII-CR 4-81

INSTRUCTION No. \_\_\_\_\_

In arriving at your determination as to what sentence is appropriate under the law, you are authorized to consider only the evidence received here in open court presented by the State and the defendant during the sentencing phase of this proceeding.

All the previous instructions given you in the first part of this trial apply where appropriate[, except that in this part of the trial, you may consider sympathy or sentiment for the defendant in deciding whether to impose the death penalty].

You must consider all the previous instructions that apply together with these additional instructions and not just part of them. Together they contain all the law and rules you must follow in deciding this case.

You determine the facts. The importance and worth of the evidence is for you to decide.

I have made rulings during the second part of this trial. In ruling, I have not in any way suggested to you, nor intimated in any way, what you should decide. I do not express any opinion whether or not aggravating circumstances or mitigating circumstances did or did not exist, nor do I suggest to you in any way the punishment to be imposed by you.

You must not use any kind of chance in reaching a verdict, but you must rest it on the belief of each of you who agrees with it.

You have already elected a foreperson. In the event you assess the death penalty, your verdict must be unanimous. You may also return a unanimous verdict of imprisonment for life without the possibility of parole or imprisonment for life with the possibility of parole. Proper forms of verdict will be given you which you shall use in expressing your decision. When you have reached your verdict, all of you in a body must return it into open court.

The law provides that you shall now listen to and consider the further arguments of the attorneys.

OUJI-CR 4-82



INSTRUCTION No. \_\_\_\_\_

If on further deliberation you are unable to agree unanimously as to punishment, I shall discharge you and impose a sentence of imprisonment for life without the possibility of parole or imprisonment for life with the possibility of parole.

If the jury is unable to reach a verdict within a reasonable time, the judge shall discharge the jury and impose a sentence of imprisonment for life without parole or imprisonment for life. 21 O.S. 1991, § 701.11. This instruction should be used only after the judge has decided that the jury in a capital case is deadlocked on the issue of punishment. *Hooks v. State*, 2001 OK CR 1, ¶¶ 30-31, 19 P.3d 294, 311-12.

OUII-CR 4-83  
(2003 Supp.)

In response to your question about whether a person who is sentenced to life imprisonment without the possibility of parole is parole eligible, you are instructed that **[Select One of the Following Options]:**

You should refer back to the instructions I gave you before;

**OR**

The punishment options are self explanatory;

**OR**

You should understand the punishment options in their plain and literal sense, and if **[Name of Defendant]** is sentenced to life imprisonment without the possibility of parole, **he/she** will not be eligible for parole.

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OUJI-CR 4-83A  
(2013 Supp.)

THE STATE OF OKLAHOMA,

Plaintiff,

vs

JOHN DOE,

Defendant.

We, the jury, empaneled and sworn in the above entitled cause, do upon our oaths unanimously find the following statutory aggravating circumstances or circumstances as shown by the circumstance or circumstances checked:

- ☐ The defendant, prior to the murder, was convicted of a felony involving the use or threat of violence to the person;
- ☐ During the commission of the murder, the defendant knowingly created a great risk of death to more than one person;
- ☐ The person committed the murder for remuneration or the promise of remuneration or employed another to commit the murder for remuneration or the promise of remuneration;
- ☐ The murder was especially heinous, atrocious, or cruel;
- ☐ The murder was committed for the purpose of avoiding or preventing a lawful arrest or prosecution;
- ☐ The murder was committed by a person while serving a sentence of imprisonment on conviction of a felony;
- ☐ The victim of the murder was a peace officer or guard of an institution under the control of the Department of Corrections, and such person was killed in performance of official duty;
- ☐ At the present time there exists a probability that the defendant will commit criminal acts of violence that would constitute a continuing threat to society.

OUII-CR 4-84

THE STATE OF OKLAHOMA,

Plaintiff,

vs

JOHN DOE,

Defendant.

We, the jury, empaneled and sworn in the above entitled cause, do upon our oaths, having heretofore found the defendant, John Doe, guilty of Murder in the First Degree, fix his punishment at death.

\_\_\_\_\_  
FOREPERSON

OUII-CR 4-85

THE STATE OF OKLAHOMA,

Plaintiff,

vs

JOHN DOE,

Defendant.

We, the jury, empaneled and sworn in the above entitled cause, do upon our oaths, having heretofore found the defendant, John Doe, guilty of Murder in the First Degree, fix his punishment at life in the State Penitentiary without the possibility of parole.

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FOREPERSON

OUJI-CR 4-86

THE STATE OF OKLAHOMA,

Plaintiff,

vs

JOHN DOE,

Defendant.

We, the jury, empaneled and sworn in the above entitled cause, do upon our oaths, having heretofore found the defendant, John Doe, guilty of Murder in the First Degree, fix his punishment at life in the State Penitentiary with the possibility of parole.

\_\_\_\_\_  
FOREPERSON

OUII-CR 4-87

THE STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
vs	)	Case No. _____
	)	
JOHN DOE,	)	
	)	
Defendant.	)	

We, the jury, empaneled and sworn in the above-entitled cause, do, upon our oaths, find as follows:

- \_\_\_\_\_ We unanimously find by a preponderance of the evidence that the Defendant is mentally retarded, as defined by the Court's instructions,
- \_\_\_\_\_ We unanimously find that the Defendant is not mentally retarded, as defined by the Court's instructions,
- \_\_\_\_\_ We are unable to unanimously find by a preponderance of the evidence that the Defendant is mentally retarded, as defined by the Court's instructions.

\_\_\_\_\_  
FOREPERSON  
\_\_\_\_\_

Statutory Authority: 21 O.S. Supp. 2006, § 701.10b.  
This Verdict form should be used with OUJI-CR 4-68A.  
OUJI-CR 4-87A

By your verdict in the first part of this trial you have already found the defendant guilty of the crime of murder in the first degree. You must now determine the proper punishment.

Under the law of the State of Oklahoma, every person found guilty of murder in the first degree shall be punished by imprisonment for life without the possibility of parole, or imprisonment for life with the possibility of parole.

You are further instructed that [**Defendant**] was a juvenile when this crime was committed. The law regards juvenile offenders generally as having lesser moral culpability and greater capacity for change than adult offenders. An offender's youth matters in determining the appropriateness of the sentence in this case.

You are therefore instructed to consider, in determining the proper sentence, whether the defendant's youth and youth-related characteristics, as well as any other aggravating and mitigating circumstances, and the nature of the crime, reflect the defendant's transient immaturity as a juvenile; or, on the other hand, irreparable corruption and permanent incorrigibility.

No person who committed a crime as a juvenile may be sentenced to life without the possibility of parole unless you find beyond a reasonable doubt that the defendant is irreparably corrupt and permanently incorrigible.

OUII-CR 4-87B  
(2018 Supp.)



INSTRUCTION No. \_\_\_\_\_

Should you unanimously find that the State has proven the Defendant is irreparably corrupt and permanently incorrigible beyond a reasonable doubt, you are authorized to consider, but not required to impose, a sentence of life without the possibility of parole. If you do not unanimously find beyond a reasonable doubt that the State has proven the Defendant is irreparably corrupt and permanently incorrigible, you are prohibited from considering a sentence of life without the possibility of parole. In that event, the sentence must be imprisonment for life with the possibility of parole.

OUJI-CR 4-87C  
(2019 Supp.)

INSTRUCTION No. \_\_\_\_\_

Irreparably Corrupt -- No meaningful possibility exists that rehabilitation will make the defendant fit to reenter society.

Permanent Incurigibility -- Serious misbehavior that proves defendant is the rare juvenile who has shown an inability to reform and will forever be a danger to society because of his total indifference to the life and safety of others.

Transient Immaturity -- The defendant's conduct was the result of temporary youth-related factors, such as chronological age, immaturity, impetuosity, and a failure to appreciate risks and consequences that suggest a possibility of rehabilitation.

OUII-CR 4-87C-1  
(2019 Supp.)

INSTRUCTION No. \_\_\_\_\_

The State of Oklahoma

)

)

Plaintiff,

)

)

vs.

)

Case No. \_\_\_\_\_

JOHN DOE,

)

)

Defendant.

)

We, the jury, empaneled and sworn in the above-entitled cause, do, upon our oaths, find as follows:

\_\_\_\_\_ the Defendant is irreparably corrupt and permanently incorrigible and sentence the Defendant to  
\_\_\_\_\_.

\_\_\_\_\_ Defendant is not irreparably corrupt and permanently incorrigible and sentence the Defendant to life  
with the possibility of parole.

\_\_\_\_\_

FOREPERSON

OUII-CR 4-87D

INSTRUCTION No. \_\_\_\_\_

The **defendant(s) is/are** charged with soliciting another to kill **[Name of Alleged Intended Victim]** by committing murder in the first degree on **[Date]** in **[Name of County]** County, Oklahoma.

OUII-CR 4-88

No person may be convicted of soliciting another to commit murder in the first degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, soliciting;

Second, another;

Third, to kill a human by an act of murder in the first degree;

Fourth, with the intent that the murder be committed;

Fifth, the elements of murder in the first degree are:

OUJI-CR 4-89

INSTRUCTION No. \_\_\_\_\_

Soliciting is urging, requesting or commanding another to commit a criminal act.

OUII-CR 4-90

(2000 Supp.)

No person may be convicted of murder in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the death of a human;

Second, caused by conduct which was imminently dangerous to **another/other person(s)**;

Third, the conduct was that of the **defendant(s)**;

Fourth, the conduct evinced a depraved mind in extreme disregard of human life;

Fifth, the conduct is not done with the intention of taking the life of any particular individual.

You are further instructed that a person evinces a "depraved mind" when he engages in imminently dangerous conduct with contemptuous and reckless disregard of, and in total indifference to, the life and safety of another.

You are further instructed that "imminently dangerous conduct" means conduct that creates what a reasonable person would realize as an immediate and extremely high degree of risk of death to another person.

OUJI-CR 4-91  
(2000 Supp.)

No person may be convicted of murder in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the death of a human;

Second, occurring as a result of an act or event which happened in the commission of a felony;

Third, caused by **[the defendant(s)]/[a person engaged with the defendant(s)]** while in the commission of a felony;

Fourth, the elements of the **[Specify Underlying Felony]** defendant(s) is/are alleged to have been in the commission of are as follows:

OUJI-CR 4-92  
(2000 Supp.)



A person is in the commission of **[Specify Underlying Felony]** when **he/she** is performing an act which is an inseparable part of **[Specify Underlying Felony]**, or which is necessary in order to complete the course of conduct constituting **[Specify Underlying Felony]**, or when **he/she** is fleeing from the immediate scene of a/an **[Specify Underlying Felony]**.

OUII-CR 4-93

No person may be convicted of manslaughter in the first degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the death of a human;

Second, occurring as a direct result of an act or event which happened in the commission of a misdemeanor;

Third, caused by **[the defendant(s)]/[a person engaged with the defendant(s)]** while in the commission of the misdemeanor;

Fourth, the elements of the **[Specify Underlying Misdemeanor]** defendant(s) is/are alleged to have been in the commission of are as follows:

**[Give Elements of Underlying Misdemeanor]**

OUII-CR 4-94

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of manslaughter in the first degree by heat of passion unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the death of a human;

Second, caused by the **defendant(s)**;

Third, the death was not excusable or justifiable;

Fourth, the death was inflicted in a cruel and unusual manner;

Fifth, when performing the conduct which caused the death, **defendant(s) was/were** in a heat of passion.

Fourth, the death was inflicted by means of a dangerous weapon;

Fifth, when performing the conduct which caused the death, **defendant(s) was/were** in a heat of passion.

OUII-CR 4-95  
(2000 Supp.)

A person who kills another person in the heat of passion cannot have the deliberate intent required for murder in the first degree. Thus, malice aforethought and heat of passion cannot co-exist.

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OUJI-CR 4-95A

INSTRUCTION No. \_\_\_\_\_

OUJI-CR 4-96  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

OUJI-CR 4-96A

Heat of passion exists when four requirements are proven. These requirements are:

First, adequate provocation;

Second, a passion or an emotion such as fear, terror, anger, rage, or resentment existed in defendant;

Third, the homicide occurred while the passion still existed, and before there was reasonable opportunity for the passion to cool;

Fourth, there was a causal connection between the provocation, the passion and the homicide.

OUJI-CR 4-97  
(2000 Supp.)

"Adequate provocation" refers to any improper conduct of the deceased toward the **defendant(s)** which naturally or reasonably would have the effect of arousing a sudden heat of passion within a reasonable person in the position of the **defendant(s)**. Generally, actions which are calculated to provoke an emotional response and ordinarily cause serious violence are recognized as adequate provocation. Actions that do not ordinarily provoke serious violence do not constitute adequate provocation. In determining whether the deceased's conduct was adequate provocation, the conduct is judged as a person of reasonable intelligence and disposition would respond to it.

Mere words alone, or threats, menaces, or gestures alone, however offensive or insulting, do not constitute adequate provocation. However, words, threats, menaces, or gestures, when considered in connection with provoking conduct of the deceased, may constitute adequate provocation. Personal violence or aggression by the deceased of a nature sufficiently violent to cause or threaten to cause pain, bloodshed, or bodily harm to the **defendant(s)** may be adequate provocation.

OUII-CR 4-98  
(2000 Supp.)



INSTRUCTION No. \_\_\_\_\_

The passion or emotion which must exist in the defendant(s) refers to any strong emotion, such as fear, terror, anger, rage or resentment. This passion or emotion must have existed to such a degree as would naturally affect the ability to reason and render the mind incapable of cool reflection. However, the passion need not have been such as would entirely overcome reason, or be so overpowering as to destroy free exercise of choice. This emotional state must, however, actually dominate the person at the time of the commission of the homicidal act and must be directed toward the deceased and not toward another.

OUII-CR 4-99  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

There must not be a reasonable opportunity for the passion to cool. This means that the homicide must have occurred while the **defendant(s) was/were** still affected by the passion or emotion. The homicide must have followed the provocation before there was time for the emotion to cool or subside. Whether or not there was a reasonable opportunity for the passion to cool depends upon whether, under all the circumstances of the particular case, there was such a lapse of time between the provocation and the homicidal act that the mind of a reasonable person would have cooled sufficiently, so that the homicide was directed by reason, rather than by passion or emotion.

The length of time that constitutes a reasonable opportunity for the passion to cool may vary according to the circumstances of the particular case.

OUJI-CR 4-100  
(2000 Supp.)

"Causal connection" means that the provocation by the deceased must have caused the passion or emotion of the defendant and that passion or emotion must have caused the act which resulted in death.

OUJI-CR 4-101

No person may be convicted of manslaughter in the first degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the death of a human;

Second, perpetrated unnecessarily (**while resisting an attempt by the deceased to commit a crime**)/(after **an attempt by the deceased to commit a crime had failed**);

Third, perpetrated by the **defendant(s)**.

OUJI-CR 4-102

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of manslaughter in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the death of a human;

Second, the death was unlawful;

Third, the death was caused by the culpable negligence of the **defendant(s)**.

OUII-CR 4-103

INSTRUCTION No. \_\_\_\_\_

The term "culpable negligence" refers to the omission to do something which a reasonably careful person would do, or the lack of the usual ordinary care and caution in the performance of an act usually and ordinarily exercised by a person under similar circumstances and conditions.

OUJI-CR 4-104

No person may be convicted of negligent homicide unless the State proves beyond a reasonable doubt each element of the crime. These elements are:

First, the death of a human;

Second, caused by the defendant's driving a vehicle upon a highway;

Third, in reckless disregard of the safety of others;

[Fourth, the death occurred within a year of the infliction of the injury causing death].

[Fifth, the defendant was 16 years of age or older].

OUII-CR 4-105

A highway is the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

OUJI-CR 4-106



INSTRUCTION No. \_\_\_\_\_

Reckless disregard of the safety of others is the omission to do something which a reasonably careful person would do, or the lack of the usual and ordinary care and caution in the performance of an act usually and ordinarily exercised by a person under similar circumstances and conditions.

OUJI-CR 4-107

Attempt - The action taken by a person, with the state of mind requisite for commission of a crime, by which the person: (a) Purposely engages in conduct which would constitute the crime if the attendant circumstances were as he believes them to be; or (b) When causing a particular result in an element of the crime, does anything with the purpose of causing or with the belief that it will cause such result, without further conduct on his part.

Reference: 21 O.S. 1991, § 44.

Crime - Any felony or misdemeanor under the law; (Name of Crime Charged) is a crime. Its elements are:

References: Palmer v. State, 78 Okl. Cr. 220, 146 P.2d 592 (1944); 21 O.S. 1991, § 4.

Cruel and Unusual Manner - Means of causing death which is aggravated, out of the ordinary, shocking or barbaric.

Reference: 10A Words and Phrases 295.

Dangerous Weapon - Any **pistol/revolver/dagger/(bowie/dirk/switch-blade/ spring-type knife)/(sword cane)/(knife having a blade which opens automatically)/ blackjack/(loaded cane)/billy/(hand chain)/(metal knuckles)/(implement likely to produce death or great bodily harm in the manner it is used or attempted to be used).**

References: Wilcox v. State, 13 Okl. Cr. 599, 166 P. 74 (1917); 21 O.S. Supp. 1995, § 1272.

Direct Result - Immediate consequence which is not separated from its initial cause by other, independent factors.

References: Ruth v. State, 581 P.2d 919 (Okl. Cr. 1978); Stumblingbear v. State, 364 P.2d 1115 (Okl. Cr. 1961); Logan v. State, 42 Okl. Cr. 294, 275 P. 657 (1929); 34A Words and Phrases 618.

Excusable - Note: If necessary to give a definition, see OUJI-CR 8-27 through OUJI-CR 8-30.

In the Commission of - Performing any act which is an inseparable part of a crime or necessary for its completion, or fleeing from the immediate scene of the offense.

References: State v. McCoy, 602 P.2d 1044 (Okl. Cr. 1979); Lime v. State, 508 P.2d 710 (Okl. Cr. 1973).

Justifiable - Note: If necessary to give a definition, see OUJI-CR 8-2.

Lawful Custody - Legally authorized confinement to a penitentiary, county jail, or other person.

References: 21 O.S. 1991 & Supp. 1995, §§ 434, 436, 443.

Legal Duty - An obligation to act which is imposed by statute, by the existence of a status relationship such as husband-wife and parent-child, by contractual agreement, or by voluntary assumption of care of another.

References: Jones v. United States, 308 F.2d 307 (D.C. Cir. 1962); W. LaFare & A. Scott, Criminal Law 183; R. Perkins, Criminal Law 592-601 (2d ed. 1969); 28 C.J.S. Duty 597.

Vehicle - Any device, used for transportation of persons or property on a highway, which is not moved by human power or used only on fixed rails or tracks. Vehicles designed and adapted exclusively for agricultural and horticultural purposes and not subject to registration are expressly excluded from this definition.

Reference: 47 O.S. 1991, § 1-186.

OUJI-CR 4-108

INSTRUCTION No. \_\_\_\_\_

The **defendant(s) is/are** charged with **kidnapping/(kidnapping for extortion)/abduction/(child stealing)** of **[Name of Alleged Victim]** on **[Date]** in **[Name of County]** County, Oklahoma.

OUJI-CR 4-109

No person may be convicted of kidnapping unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, unlawfully;

Second, **seizes/confines/inveigles/decoys/kidnaps/abducts/(carries away)**;

Third, another person;

Fourth, with the intent to **(confine that person)/(imprison that person)/(send that person out of the State)/(sell that person as a slave)/(hold that person to service)**: against that person's will.

OUII-CR 4-110  
(2013 Supp.)

No person may be convicted of kidnapping for extortion unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, unlawful;

Second, (**forcible seizure and confinement**)/inveiglement;

Third, of another;

Fourth, with intent to extort **money/property/(a valuable thing)** from any person.

OUJI-CR 4-111

No person may be convicted of abduction unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, taking;

Second, a person under the age of fifteen;

Third, from a person having legal custody;

Fourth, without consent;

Fifth, for the purpose of **marriage/concubinage/(committing a crime involving moral turpitude)**.

OUJI-CR 4-112

No person may be convicted of child stealing unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **maliciously/forcibly/fraudulently**;

Second, **taking/enticing** away;

Third, a child under the age of sixteen;

[Fourth], with the intent to detain or conceal the child;

Fifth, from the parent, guardian or other person having the lawful charge of the child.]

[Fourth], with the intent to transport the child outside **of Oklahoma/(the United States)**;

Fifth, without the consent of the person having lawful charge of the child.]

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Statutory Authority: 21 O.S. 2011, § 891.

This crime generally involves a fact situation concerning a dispute over custody of a child between divorced parents, or between parents and grandparents. The crimes of kidnapping under either sections 741 or 745(A) are probably not committed in these situations because the parent or grandparent does not possess the specific intent required by those sections. Moreover, the crime of child stealing is much broader in its protection of parental or other legal custodial authority than is the crime of abduction. See generally R. Perkins, *Criminal Law* 181-82 (2d ed. 1969).

OUJI-CR 4-113  
(2019 Supp.)

No person may be convicted of human trafficking for labor unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, knowingly;

Second, **recruiting/enticing/harboring/maintaining/transporting/ providing/obtaining another/other person(s)**;

Third, through **deception/force/fraud/threat/coercion**;

Fourth, for the purpose of engaging **that/those person(s)** in labor.

First, knowingly;

Second, benefiting (**financially/(by receiving anything of value)**);

Third, from participating in a venture that has engaged in;

Fourth, **recruiting/enticing/harboring/maintaining/transporting/ providing/obtaining another/other person(s)**;

Fifth, through **deception/force/fraud/threat/coercion**;

Sixth, for the purpose of engaging **that/those person(s)** in labor.

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Statutory Authority: 21 O.S. Supp. 2014, § 748(A)(5).

For definitions of coercion and legal process, see OUJI-CR 4-114D, *infra*. For an instruction on an affirmative defense of a victim of human trafficking to other crimes, see OUJI-CR 8-61, *infra*.

"Human trafficking" is defined at 21 O.S. Supp. 2014, § 748(A)(4) as a form of modern day slavery that includes, but is not limited to, extreme exploitation and denial of freedom or liberty of an individual for purposes of deriving benefit from that individual's commercial sex act or labor. The term "not limited to" in the definition appears to contemplate a form of human trafficking in addition to that done for purposes of commercial sex or labor, but the statute does not provide guidance as to human trafficking for other purposes. Accordingly, the Committee has not attempted to draft an instruction that would cover human trafficking for other purposes.

The text of § 748(A)(5)(a) has an "or" between "deception, force, fraud, threat or coercion" and "for purposes of engaging the person in labor." The Committee decided that this "or" should be omitted from the text of the Instruction in order to require that human trafficking for labor must involve deception, force, fraud, threat or coercion. Compare the parallel language of § 748(A)(6)(a), where "or" is not present.

OUJI-CR 4-113A  
(2014 Supp.)



No person may be convicted of human trafficking for commercial sex unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, knowingly;

Second, **recruiting/enticing/harboring/maintaining/transporting/ providing/obtaining another/other person(s)**;

Third, through **deception/force/fraud/threat/coercion**;

Fourth, for the purpose of engaging **that/those person(s)** in an act of commercial sex.

First, knowingly;

Second, benefiting **(financially/(by receiving anything of value))**;;

Third, from participating in a venture that has engaged in;

Fourth, **recruiting/enticing/harboring/maintaining/transporting/ providing/obtaining another/other person(s)**;

Fifth, through **deception/force/fraud/threat/coercion**;

Sixth, for the purpose of engaging **that/those person(s)** in an act of commercial sex.

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Statutory Authority: 21 O.S. Supp. 2014, § 748(A)(6).

For definitions of coercion, commercial sex, and legal process, see OUJI-CR 4-114D, *infra*. For an instruction on an affirmative defense of a victim of human trafficking to other crimes, see OUJI-CR 8-61, *infra*.

"Human trafficking" is defined at 21 O.S. Supp. ,2014 § 748(A)(4) as a form of modern day slavery that includes, but is not limited to, extreme exploitation and denial of freedom or liberty of an individual for purposes of deriving benefit from that individual's commercial sex act or labor. The term "not limited to" in the definition appears to contemplate a form of human trafficking in addition to that done for purposes of commercial sex or labor, but the statute does not provide guidance as to human trafficking for other purposes. Accordingly, the Committee has not attempted to draft an instruction that would cover human trafficking for other purposes.

OUJI-CR 4-113B  
(2014 Supp.)

No person may be convicted of human trafficking of a minor for commercial sex unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, knowingly;

Second, **recruiting/enticing/harboring/maintaining/transporting/ providing/purchasing/obtaining** a minor;

Third, for the purpose of engaging the minor in an act of commercial sex.

A minor is a person under the age of eighteen.

First, knowingly;

Second, benefiting **(financially/(by receiving anything of value))**;

Third, from participating in a venture that has engaged in;

Fourth, **recruiting/enticing/harboring/maintaining/transporting/ providing/purchasing/obtaining** a minor;

Fifth, for the purpose of engaging the minor in an act of commercial sex.

A minor is a person under the age of eighteen.

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Statutory Authority: 21 O.S. Supp. 2014, § 748(A) (6)(b), (c), (A)(8).

For definitions of coercion, commercial sex, and legal process, see OUJI-CR 4-114D, *infra*. . For an instruction on an affirmative defense of a victim of human trafficking to other crimes, see OUJI-CR 8-61, *infra*.

"Human trafficking" is defined at 21 O.S. Supp. , 2014 § 748(A)(4) as a form of modern day slavery that includes, but is not limited to, extreme exploitation and denial of freedom or liberty of an individual for purposes of deriving benefit from that individual's commercial sex act or labor. The term "not limited to" in the definition appears to contemplate a form of human trafficking in addition to that done for purposes of commercial sex or labor, but the statute does not provide guidance as to human trafficking for other purposes. Accordingly, the Committee has not attempted to draft an instruction that would cover human trafficking for other purposes.

OUJI-CR 4-113C  
(2014 Supp.)

Coercion - **Compelling/Forcing/Intimidating** a person to act by:

threats of harm or physical restraint against any person.

any **act/scheme/plan/pattern** intended to cause a person to believe that **performing/(failing to perform)** an act would result in serious **(physical/financial/emotional harm/distress to)/(physical restraint against)** any person.

the **abuse/(threatened abuse)** of the **law/(legal process)**.

**knowingly destroying/concealing/removing/confiscating/possessing** any **actual/purported passport/(labor/immigration document)/(government identification document, including but not limited to a driver license or birth certificate)** of another person.

**facilitating/controlling** a person's access to any **addictive/controlled** substance other than for legal medical purposes.

blackmail.

**demanding/claiming money/goods/(any thing of value) from/(on behalf of)** a prostituted person where such **demand/claim (arises from)/(is directly related to)** the act of prostitution.

**determining/dictating/setting** the times at which another person will be available to engage in an act of prostitution with a third party.

**determining/dictating/setting** the places at which another person will be available **(for solicitation of)/(to engage in)** an act of prostitution with a third party.

**determining/dictating/setting** the places at which another person will reside for purposes of making such person available to engage in an act of prostitution with a third party.

Reference: 21 O.S. Supp. 2014, § 748(A)(1).

Commercial sex - Any form of commercial sexual activity such as sexually explicit performances, prostitution, participation in the production of pornography, performance in a strip club, or exotic dancing or display.

Reference: 21 O.S. Supp. 2014, § 748(A)(2).

Minor - A person under the age of eighteen (18) years.

Reference: 21 O.S. Supp. 2014, § 748(A)(8).

Legal process - The **(criminal/civil law)/(regulatory system) of (the federal government)/(any state/territory/district/commonwealth/(trust territory)/(any foreign government)/(subdivision of a foreign government)** and includes **(legal civil/criminal actions)/(regulatory petitions/applications)**.

Reference: 21 O.S. Supp. 2014, § 748(A)(7).

Victim - A person against whom human trafficking has been committed.

Reference: 21 O.S. Supp. 2014, § 748(A)(9).

OUII-CR 4-113D  
(2014 Supp.)

Concubinage - Living together without authority of law as husband and wife.

References: Scott v. State, 85 Okl. Cr. 213, 186 P.2d 336 (1947); 8 Words & Phrases 588.

Crime Involving Moral Turpitude - A crime involving willful, intentional conduct contrary to justice, honesty, and good morals. Under the law **[Name Crime]** is a crime involving moral turpitude. The elements of **[Name Crime]** are:

References: Kelley v. Tulsa, 569 P.2d 455 (Okl. 1977); State ex rel. Oklahoma Bar Ass'n v. Jones, 566 P.2d 130 (Okl. 1977); Palmer v. State, 78 Okl. Cr. 220, 146 P.2d 592 (1944).

Extort - Obtain property by the use of threat(s).

Reference: 21 O.S. 1991, § 1481.

Hold to Service -- Any acts or services, or the forbearance of same, done at the command of the perpetrator, through force, inveiglement or coercion, for the benefit of the perpetrator.

Reference: Perry v. State, 853 P.2d 198, 202 (Okl. Cr. 1993).

Inveiglement - The act of enticing one person to accompany another without the use of force.

Reference: 51 C.J.S. Kidnapping § 1(5).

Property - Property includes:

(a) Real Property - Every estate, interest, and right in lands, including structures or objects permanently attached to the land;

(b) Personal Property - Money, goods, chattels, effects, evidences of rights in action, and written instruments effecting a monetary obligation or right or title to property.

References: 21 O.S. 1991, §§ 102, 103, 104.

Unlawful - Without authority.

Reference: State v. Stegall, 96 Okl. Cr. 281, 253 P.2d 183 (1953).

Valuable Thing - Includes not only tangible property and common intangibles such as notes and checks, but also other intangibles, such as a woman's chastity or the use of an automobile.

References: Householder v. Ramey, 485 P.2d 247 (Okl. Cr. 1971), overruled on other grounds, Stockton v. State, 509 P.2d 153 (Okl. Cr. 1973).

OUII-CR 4-114

INSTRUCTION No. \_\_\_\_\_

The **defendant(s) is/are** charged with **(maiming of [Name of Alleged Victim])/(self-maiming)** on **[Date]** in **[Name of County]** County, Oklahoma.

OUII-CR 4-115

No person may be convicted of maiming unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, infliction;

Second, upon another;

Third, of a physical injury that **disables/disfigures/(seriously diminishes physical vigor)**;

Fourth, performed with the intent to cause any injury.

OUJI-CR 4-116

No person may be convicted of self-maiming unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, infliction;

Second, upon oneself;

Third, of a disabling physical injury;

Fourth, with the intended purpose of avoiding any existing or anticipated legal duty.

OUII-CR 4-117

Disables - Injures any member or organ of a person.

Reference: 21 O.S. 1991, § 751.

Disfigures - Injures personal appearance in such a way as is calculated to attract observation after healing.

Reference: 21 O.S. 1991, § 755.

OUJI-CR 4-118



The **defendant(s)** is/are charged with:

**[rape in the first/second degree]**

**[spousal rape in the first degree]**

**[rape by instrumentation in the first/second degree]**

**[forcible oral sodomy]**

**[sexual battery]**

**[indecent or lewd acts with a child under sixteen]**

**[indecent proposals to a child under sixteen]**

on **[Date]** in **[Name of County]** County, Oklahoma.

OUJI-CR 4-119

No person may be convicted of rape in the first degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, sexual intercourse;

Second, with a person who was not the spouse of the defendant **[and who may be of the same sex as the defendant]**;

**[Third, where the defendant was over the age of eighteen, and the victim was under the age of fourteen].**

**OR**

**[Third, where the victim was incapable through mental illness or any other unsoundness of mind, whether temporary or permanent, of giving legal consent].**

**OR**

**[Third, where the victim was intoxicated by a/an narcotic/(anesthetic agent);**

**[Fourth, (given by)/(with the knowledge of) the defendant;**

**[Fifth, as a means of forcing the victim to submit].**

**OR**

**[Third, where the victim was at the time unconscious of the nature of the act and this fact was known by the defendant].**

**OR**

**[Third, [where force/violence was used against (the victim)/(another person)]/ [where force/violence was threatened against (the victim)/(another person) and the defendant had the apparent power to carry out the threat of force/violence].**

OUII-CR 4-120

No person may be convicted of spousal rape in the first degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, sexual intercourse;

Second, with the spouse of the defendant;

Third, where force/violence was used against [(the victim)/(another person)]/[where force/violence was threatened against (the victim)/(another person) and the defendant] had the apparent power to carry out the threat of force/violence].

OUII-CR 4-121

Sexual intercourse is the actual penetration of the **vagina/anus** by the penis. Any sexual penetration, however slight, is sufficient to complete the crime of rape.

OUJI-CR 4-122

In order to be capable of giving legal consent to a sexual act, a person must be capable of understanding the act, its nature and possible consequences.

OUJI-CR 4-123

No person may be convicted of rape in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, sexual intercourse;

Second, with a person who is not the spouse of the defendant **[and who may be of the same sex as the defendant]**;

**[Third, where the victim was under the age of sixteen].**

**[Third, where the victim was under the belief induced by the defendant that the victim was having intercourse with his/her spouse].**

**[Third, where the victim was under the legal custody/supervision;**

**Fourth, of a (state/federal agency)/county/municipality/(political subdivision); and**

**Fifth, the defendant was an employee/(employee of a [subcontractor of a] contractor of)/the (state/federal agency)/county/municipality/(political subdivision) that exercised authority over the victim;].**

**[Third, where the victim was between sixteen and twenty years of age;**

**Fourth, the victim was a student/(under the legal custody/supervision) of a/an (elementary/secondary school)/(junior high)/high/(public vocational) school;**

**Fifth, the defendant was eighteen years of age or older; and**

**Sixth, the defendant was an employee of the victim's school system].**

**Third, where the victim was nineteen years of age or younger; and**

**Fourth, in the legal custody of a (state/federal agency)/(tribal court); and**

**Fifth, the defendant was a (foster parent)/(foster parent applicant).**

**[Fourth, where the victim was at least sixteen years of age but less than eighteen years of age; and**

**Fifth, the defendant was a person responsible for the victim's health, safety or welfare].**

A person responsible for a child's health, safety or welfare includes, but is not limited to **[Select applicable type of person]: a/an parent/(legal guardian)/custodian/(foster parent)/(person living with the child's parent and is eighteen years of age or older)/(adult residing in the child's home)/ (agent/employee of a public/private (residential home/institution/facility))/(day treatment program)/(owner/operator/employee of a child care facility).**

You are further instructed that any sexual penetration, however slight, is sufficient to complete the crime.

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Statutory Authority: 21 O.S. Supp. 2019, § 1111, 21 O.S. 2011, § 1114.

The other alternatives in the third element constitute, in fact or by law, sexual intercourse without the consent of the victim.

The age of the defendant is not an element of the crime of second-degree rape. If the prosecutor is uncertain

whether it can be proved that the defendant has attained the age of 18, he/she can charge the defendant with second-degree rape and the conviction would be upheld although it is established that the defendant is over 18. *Brasel v. State*, 1929 OK CR 216, 291 P. 807, 48 Okl. Cr. 403. The age of the defendant may become relevant as a defense, however, under section 1112, if the victim is over 14 years of age and consents, and the defendant is under 18 years of age.

Oklahoma's rape shield law, 12 O.S. 2011, § 2412, limits the use of evidence of the sexual behavior of the victim in prosecutions for sexual offenses.

OUII-CR 4-124  
(2019 Supp.)

No person may be convicted of rape by instrumentation in the first degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the person penetrated the **anus/vagina**;

Second, of any victim;

Third, with **(an inanimate object)/(a part of the human body other than the penis)**; and

Fourth, without the victim's consent; and

Fifth, **[List the Circumstance(s) Specified in Section 1111 Which Exist in This Case]**.

Any sexual penetration, however slight, is sufficient to complete the crime of rape by instrumentation.

First, the person was eighteen years of age or older;

Second, the person was an employee of the victim's school system; and

Third, the person penetrated the **anus/vagina**;

Fourth, of a **student /(person under the legal custody/supervision) of a public/private (elementary/secondary school)/(junior high) /high/(public vocational) school**;

Fifth, who was at least sixteen years of age and less than twenty years of age;

Sixth, with **(an inanimate object)/(a part of the human body other than the penis)**.

Any sexual penetration, however slight, is sufficient to complete the crime of rape by instrumentation.

First, the defendant was an **employee/(employee of a contractor of)/the (state/federal agency)/county/municipality/(political subdivision)**; and

Second, who penetrated the **anus/vagina**;

Third, of a person who was under the legal **custody/supervision**;

Fourth, of the **(state/federal agency)/county/municipality/(political subdivision)** that employed the defendant;

Fifth, with **(an inanimate object)/(a part of the human body other than the penis)**;

Any sexual penetration, however slight, is sufficient to complete the crime of rape by instrumentation.

First, the defendant was a **(foster parent)/(foster parent applicant)**;

Second, who penetrated the **anus/vagina**;

Third, of a person who was nineteen years of age or younger;

Fourth, with **(an inanimate object)/(a part of the human body other than the penis)**;

Fifth, when the person was in the legal custody of a **(state/federal agency)/(tribal court)**.

Any sexual penetration, however slight, is sufficient to complete the crime of rape by instrumentation.



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Statutory Authority: 21 O.S. 2011 & Supp. 2019, §§ 1111.1, 1113, 1114.

OUJI-CR 4-125  
(2019 Supp.)

No person may be convicted of rape by instrumentation in the first degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, penetration of the **anus/vagina**;

Second, of a child under fourteen years of age;

Third, by **(an inanimate object)/(a part of the human body other than the penis)**.

Any sexual penetration, however slight, is sufficient to complete the crime of rape by instrumentation.

OUJI-CR 4-126

(2003 Supp.)

No person may be convicted of rape by instrumentation in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the person penetrated the **anus/vagina**;

Second, of any victim;

Third, with **(an inanimate object)/(a part of the human body other than the penis)**;

Fourth, without the victim's consent;

Fifth, **[List the Circumstance(s) Specified in Section 1111 Which Exist in This Case]**.

Any sexual penetration, however slight, is sufficient to complete the crime of rape by instrumentation.

First, the person was eighteen years of age or older; and

Second, the person was an employee of the victim's school system; and

Third, who penetrated the **anus/vagina**;

Fourth, of a **student/(person under the legal custody/supervision) of a public/private (elementary/secondary school)/(junior high)/high/(public vocational) school**;

Fifth, who was at least sixteen years of age and less than twenty years of age.

Any sexual penetration, however slight, is sufficient to complete the crime of rape by instrumentation.

First, the defendant was an **employee/(employee of a contractor of)/the (state/federal agency)/county/municipality/(political subdivision)**; and

Second, who penetrated the **anus/vagina**;

Third, of a person who was under the legal **custody/supervision**;

Fourth, of the **(state/federal agency)/county/municipality/(political subdivision)** that employed the defendant.

Any sexual penetration, however slight, is sufficient to complete the crime of rape by instrumentation.

First, the defendant was a **(foster parent)/(foster parent applicant)**;

Second, who penetrated the **anus/vagina**;

Third, of a person who was nineteen years of age or younger;

Fourth, when the person was in the legal custody of a **(state/federal agency)/(tribal court)**.

Any sexual penetration, however slight, is sufficient to complete the crime of rape by instrumentation.

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Statutory Authority: 21 O.S. Supp. 2015, § 1111.1, 21 O.S. 2011, §§ 1113, 1114.

Most elements of rape by instrumentation are self-explanatory. In reference to the first element, note that

penetration of the mouth is not included within this offense. Such a forcible act would, however, be covered by the crime against nature/forcible sodomy statutes, 21 O.S. 2011, §§ 886, 888. "Any sexual penetration, however slight, is sufficient to complete this crime." 21 O.S. 2011, § 1113.

The second element, "of another person," means just what it states. Under section 1111.1, spousal "rape" is specifically recognized. The Commission has concluded that the language "of another person," when used in conjunction with "penetration of the anus or vagina," means that a male can "rape" a male and a female can "rape" a female by instrumentation.

OUJI-CR 4-127  
(2019 Supp.)

No person may be convicted of forcible oral sodomy unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, penetration;

Second, of the **mouth/vagina** of the **defendant/victim**;

Third, by the **mouth/penis** of the **defendant/victim**;

[Fourth, which is accomplished by means of force or violence, or threats of force or violence that are accompanied by the apparent power of execution.]

You are further instructed that any sexual penetration, however slight, is sufficient to complete the crime.

[Fourth, by a person over the age of eighteen on a child under the age of sixteen.]

You are further instructed that any sexual penetration, however slight, is sufficient to complete the crime.

[Fourth, committed upon a person incapable through mental illness or any unsoundness of mind of giving legal consent].

You are further instructed that any sexual penetration, however slight, is sufficient to complete the crime.

[Fourth, committed by a **state/county/municipal/ (political subdivision) employee/contractor/[employee of a subcontractor of a] contractor of (the state)/ (a county/municipality/(political subdivision of Oklahoma))** upon a person who was under the legal custody, supervision or authority of a **(state agency)/county/ municipality/(political subdivision)** of Oklahoma.

You are further instructed that any sexual penetration, however slight, is sufficient to complete the crime.

[Fourth, where the victim was at least sixteen but less than twenty years of age;

Fifth, the victim was a student of a **(secondary school)/(junior high)/ high/(public vocational)** school;

Sixth, the defendant was eighteen years of age or older; and

Seventh, the defendant was an employee of the victim's school system].

You are further instructed that any sexual penetration, however slight, is sufficient to complete the crime.

[Fourth, where the victim was at the time unconscious of the nature of the act and this fact **was/(should have been)** known by the defendant].

You are further instructed that any sexual penetration, however slight, is sufficient to complete the crime.

[Fourth, where the victim was intoxicated by **a/an narcotic/(anesthetic agent)**;

Fifth, **(given by)/(with the knowledge of)** the defendant;

Sixth, as a means of forcing the victim to submit].

You are further instructed that any sexual penetration, however slight, is sufficient to complete the crime.

[Fourth, where the victim was at least sixteen years of age but less than eighteen years of age; and

Fifth, the defendant was a person responsible for the victim's health, safety or welfare].

A person responsible for a child's health, safety or welfare includes, but is not limited to **[Select applicable type of person]: a/an parent/(legal guardian)/custodian/(foster parent)/(person living with the child's parent and is eighteen years of age or older)/(adult residing in the child's home)/ (agent/employee of a public/private)/(residential home/institution/facility)/(day treatment program)/(owner/operator/employee of a child care facility).**

You are further instructed that any sexual penetration, however slight, is sufficient to complete the crime.

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Statutory Authority: 21 O.S. 2011 & Supp. 2019, §§ 886 - 888.

The trial court should select the Fourth Element that is supported by the evidence. The Fourth Element should not be included for prosecutions under 21 O.S. 2011, § 886.

The trial judge should pay particular attention to making sure the Second and Third Elements conform to the evidence at trial. In *Collins v. State*, 2009 OK CR 32 n.11, 223 P.3d 1014, 1018 n.11, the Court of Criminal Appeals stated that:

[I]n cases involving separate counts of forcible oral sodomy, where the crimes alleged involve different factual theories, it is advisable to instruct the jury with separate instructions. In particular, such instructions should make clear whether the crime alleged is forcing the victim to perform oral sex on the perpetrator (penetration of the mouth of the victim by the penis of the defendant) or forcing the victim to endure oral sex performed by the perpetrator (penetration of the vagina of the victim by the mouth of the defendant).

In addition, in the Second and Third Elements, the trial judge should not select the options of penetration of the vagina of the victim by the penis of the defendant, because that would constitute rape, and the appropriate instruction for rape should be used instead.

Section 886 has been held not to be unconstitutionally vague. *Golden v. State*, 1985 OK CR 9, ¶ 4, 695 P.2d 6, 7. However, in *Post v. State*, 1986 OK CR 30, ¶¶ 11-12, 715 P.2d 1105, 1109-10, the Oklahoma Court of Criminal Appeals declared it unconstitutional as violative of the right to privacy if applied to private consensual heterosexual activity. Accordingly, the jury should receive an instruction on the defense of consent in such cases if there is evidence of consent presented. *Hinkle v. State*, 1989 OK CR 4, ¶¶ 4-5, 771 P.2d 232, 233. In *Garcia v. State*, 1995 OK CR 85, ¶ 4, 904 P.2d 144, 145, the Court of Criminal Appeals ruled that it was error for the trial court to give an instruction for non-forcible sodomy (21 O.S. 2011, § 886) as a lesser included offense of forcible sodomy (21 O.S. Supp. 2019, § 888), where the charge involved heterosexual activity and the defendant raised the defense of consent.

Penetration is required under 21 O.S. 2001, § 887. *Salyers v. State*, 1988 OK CR 88, ¶ 7, 755 P.2d 97, 100. Corroboration of the victim's testimony is not required unless "the victim's testimony is so incredible or has been so thoroughly impeached that a reviewing court must say that the testimony is clearly unworthy of belief." *Salyer v. State*, 1999 OK CR 184, ¶ 22, 761 P.2d 890, 895.

OUII-CR 4-128  
(2019 Supp.)

No person may be convicted of **(lewd acts with)/(indecent proposals to)** a child under sixteen unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the defendant knowingly and intentionally;

Second, made **a/an oral/written/(electronically/computer generated) lewd or indecent proposal**;

Third, to a **child/(person the defendant believed to be a child)** under sixteen years of age;

Fourth, for the child to have unlawful **sexual relations/intercourse** with any person; and

Fifth, the defendant **(was at least three years older than the child)/(was at least three years older than the purported child's age)/(used force/fear)**.

**OR**

First, the defendant knowingly and intentionally;

Second, **(looked upon)/touched/mauled/felt**;

Third, the body or private parts;

Fourth, of a child under sixteen years of age;

Fifth, in any lewd or lascivious manner; and

Sixth, the defendant **(was at least three years older than the child)/(used force/fear)**.

**OR**

First, the defendant knowingly and intentionally;

Second, **asked/invited/enticed/persuaded**;

Third, a **child/(person the defendant believed to be a child)** under sixteen years of age;

Fourth, to go alone with any person;

Fifth, to a **secluded/remote/secret** place;

Sixth, with the unlawful and willful intent and purpose;

Seventh, to commit **[Identify Crime Against Public Decency and Morality]**; and

Eighth, the defendant **(was at least three years older than the child)/(was at least three years older than the purported child's age)/(used force/fear)**.

**OR**

First, the defendant knowingly and intentionally;

Second, in a lewd and lascivious manner;

Third, for the purpose of sexual gratification;

Fourth, **[urinated/defecated upon]/[ejaculated upon/(in the presence of)]**;

Fifth, a child under sixteen years of age; and

Sixth, the defendant **(was at least three years older than the child)/(used force/fear)**.

**OR**

First, the defendant knowingly and intentionally;

Second, in a lewd and lascivious manner;

Third, for the purpose of sexual gratification;

Fourth, **caused/exposed/forced/required** a child under sixteen years of age;

Fifth, to look upon **[the body/(private parts) of another person]/[sexual acts performed in the presence of the child]**; and

Sixth, the defendant **(was at least three years older than the child)/(used force/fear)**.

**OR**

First, the defendant knowingly and intentionally;

Second, in a lewd and lascivious manner;

Third, for the purpose of sexual gratification;

Fourth, **forced/required** a child under sixteen years of age;

Fifth, to **touch/feel the body/(private parts) of (the child)/(another person)**; and

Sixth, the defendant **(was at least three years older than the child)/(used force/fear)**.

**OR**

First, the defendant knowingly and intentionally;

Second, in a lewd and lascivious manner;

Third, for the purpose of sexual gratification;

Fourth, **forced/required** a **child/(person the defendant believed to be a child)** under sixteen years of age;

Fifth, to view **(obscene materials)/(child pornography)/(materials deemed harmful to minors)**; and

Sixth, the defendant **(was at least three years older than the child)/(was at least three years older than the purported child's age)/(used force/fear)**.

The words "lewd" and "lascivious" have the same meaning and signify conduct which is lustful and which evinces an eagerness for sexual indulgence.





No person may be convicted of sexual battery unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the defendant intentionally;

Second, **touched/felt/mauled**;

Third, in a lewd and lascivious manner;

Fourth, the **body/(private parts)**;

Fifth, of a person sixteen years of age or older;

Sixth, without **his/her** consent.

OR

First, a **state/county/municipal/(political subdivision) employee/contractor/[employee of a contractor of (the state)/(a county/municipality/(political subdivision of Oklahoma)] ;**

Second, intentionally;

Third, **touched/felt/mauled**;

Fourth, in a lewd and lascivious manner;

Fifth, the **body/(private parts)**;

Sixth, of a person sixteen years of age or older;

Seventh, who was under the legal custody, supervision or authority of the **(state agency)/county/municipality/(political subdivision)** of Oklahoma.

OR

First, the defendant was eighteen years of age or older;;

Second, the defendant was an employee of the victim's school system;

Third, and intentionally;

Fourth, **touched/felt/mauled**;

Fifth, in a lewd and lascivious manner;

Sixth, the **body/(private parts)**;

Seventh, of a person at least sixteen years of age and less than twenty years of age;

Eighth, who was a **student/(person under the legal custody/supervision) of a public/private (elementary/secondary/(technology center) school.**

OR

First, the defendant was a **(foster parent)/(foster parent applicant)**; and

Second, intentionally;

Third, **touched/felt/mauled**;

Fourth, in a lewd and lascivious manner;

Fifth, the **body/(private parts)**;

Sixth, of a person who was nineteen years of age or younger;

Seventh, when the person was in the legal custody of a **(state/federal agency)/(tribal court)**.

The words "lewd" and "lascivious" have the same meaning and signify conduct which is lustful and which evinces an eagerness for sexual indulgence.

**[An "employee of the victim's school system" means a teacher, principal or other duly appointed person employed by a school system or an employee of a firm contracting with a school system who exercises authority over the victim.]**

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Statutory Authority: 21 O.S. Supp. 2015, § 1123(B).

OUJI-CR 4-130  
(2016 Supp.)

No person may be convicted of indecent exposure unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, and in a lewd manner;

Third, exposed **his/her person/penis/vagina**;

Fourth, in a **(public place)/(place where there were present other persons to be offended/annoyed thereby)**.

OUJI-CR 4-131  
(2000 Supp.)

No person may be convicted of procuring lewd exhibition unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, **procuring/counseling/assisting** any person;

Third, to **(expose himself/herself)/(make any exhibition of himself/herself) to (public view)/(the view of any number of persons)**;

Fourth, for the purpose of sexual stimulation of the viewer.

OUJI-CR 4-132  
(2000 Supp.)

No person may be convicted of distribution of pornography unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the defendant willfully;

[Second, \_\_\_\_\_ **wrote/composed/stereotyped/printed/photographed/  
designed/copied/drew/engraved/painted/molded/cut/prepared/ published/sold/distributed/(kept  
for sale)/exhibited;**

Third, any **(obscene material)/(child pornography).**]

[Second, **made/prepared/cut/sold/gave/loaned/distributed/(kept for sale)/exhibited;**

Third, any type of **(obscene material)/(child pornography).**]

You are instructed that the word "willfully," as used in these instructions, requires that you must find beyond a reasonable doubt from all the evidence in this case (either direct or circumstantial or both) that the defendant knew the nature and character of the contents of **[specify alleged obscene material or child pornography]**. It is not necessary that **[Name of Defendant]** knew the exact content or actually **saw/read** the **[specify alleged obscene material or child pornography]**.

OUII-CR 4-133  
(2000 Supp.)

No person may be convicted of solicitation of a minor unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, **solicited/aided** a minor child to;

[Third, in a lewd manner;

Fourth, expose **his/her person/penis/vagina**;

Fifth, in a place where there were present other persons to be offended or annoyed thereby.]

[Third, **procure/counsel/assist** any person;

Fourth, to (**expose himself/herself**)/(**make any exhibition of himself/herself**) to (**public view**)/(**the view of any number of persons**);

Fifth, for the purpose of sexual stimulation of the viewer.]

[Third, **write/compose/stereotype/print/photograph/design/copy/draw/engrave/paint/mold/cut/prepare/publish/sell/distribute/(keep for sale)/exhibit**;

Fourth, any (**obscene material**)/(**child pornography**).]

[Third, **made/prepared/cut/sold/gave/loaned/distributed/ (kept for sale)/exhibited**;

Fourth, any type of (**obscene material**)/(**child pornography**).]

OUII-CR 4-134  
(2000 Supp.)

No person may be convicted of exhibition of obscene material to a minor unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the defendant willfully;

Second, **showed/exhibited/loaned/distributed** to a minor child;

Third, any **(obscene material)/(child pornography)**;

Fourth, for the purpose of inducing the minor child to;

[Fifth, expose **his/her person/penis/vagina**;

Sixth, in a place where there were present other persons to be offended or annoyed thereby;

Seventh, in a lewd manner.]

[Fifth, **write/compose/stereotype/print/photograph/design/copy/draw/engrave/paint/mold/cut/prepare/publish/sell/distribute/(keep for sale)/exhibit**;

Sixth, any **(obscene material)/(child pornography)**.]

[Fifth, **make/prepare/cut/sell/give/loan/distribute/(keep for sale)/exhibit**;

Sixth, any type of **(obscene material)/(child pornography)**.]

You are instructed that the word "willfully," as used in these instructions, requires that you must find beyond a reasonable doubt from all the evidence in this case (either direct or circumstantial or both) that the defendant knew the nature and character of the contents of **[specify alleged obscene material or child pornography]**. It is not necessary that **[Name of Defendant]** knew the exact content or actually **saw/read** the **[specify alleged obscene material or child pornography]**.



No person may be convicted of **buying/possessing/procuring** child pornography unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, **buying/procuring/possessing**;

Third, child pornography.

You are instructed that the word "willfully," as used in these instructions, requires that you must find beyond a reasonable doubt from all the evidence in this case

**(either direct or circumstantial or both) that the defendant knew the nature and character of the contents of [specify alleged child pornography].** It is not necessary that [Name of Defendant] knew the exact content or actually saw/read the [specify alleged child pornography].

OUII-CR 4-135A  
(2000 Supp.)

No person may be convicted of procurement of child for pornography unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, knowingly;

Second, **procuring/causing** the participation of;

Third, a child under the age of 18;

Fourth, in any child pornography.

OUJI-CR 4-135B  
(2000 Supp.)

No person may be convicted of **possession/procurement** of child pornography unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, knowingly;

Second, **possessing/procuring/manufacturing/(causing to be sold/distributed)**;

Third, any child pornography.

You are instructed that the word "knowingly," as used in these instructions, requires that you must find beyond a reasonable doubt from all the evidence in this case (either direct or circumstantial or both) that the defendant knew the nature and character of the contents of **[specify alleged child pornography]**. It is not necessary that **[Name of Defendant]** knew the exact content or actually **saw/read** the **[Specify Alleged Obscene Material]**.

OUII-CR 4-135C  
(2000 Supp.)

No person may be convicted of violating the peeping tom statute unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **hiding/waiting/loitering**;

Second , near any **(private dwelling house)/(apartment building)/(place of residence)/(locker/dressing room)/restroom/(place where a person has a right to a reasonable expectation of privacy)**;

Third, with the unlawful and willful intent;

Fourth, to **watch/gaze/(look upon)** any person;

Fifth, in a clandestine manner.

OUII-CR 4-136  
(2003 Supp.)

No person may be convicted of taking clandestine photos unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, using **photographic/electronic/video** equipment;

Second, in a clandestine manner;

Third, for **a/an illegal/illegitimate/prurient/lewd/lascivious** purpose;

Fourth, with the unlawful and willful intent;

Fifth, to **view/watch/gaze/(look upon)** another person;

Sixth, without the knowledge and consent of the other person;

Seventh, when the other person was in a place where there is a right to a reasonable expectation of privacy.

First, **publishing/distributing** an image obtained from;

Second, using **photographic/electronic/video** equipment;

Third, in a clandestine manner;

Fourth, for **a/an illegal/illegitimate/prurient/lewd/lascivious** purpose;

Fifth, with the unlawful and willful intent;

Sixth, to **watch/gaze/(look upon)** another person;

Seventh, without the knowledge and consent of the other person;

Eighth, when the other person was in a place where there is a right to a reasonable expectation of privacy.

OUII-CR 4-136A  
(2003 Supp.)

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of incest unless the State has proved beyond a reasonable doubt each element of the crime.  
These elements are:

First, (~~married to~~)/(committed adultery/fornication with);

Second, the defendant's [**Identify Relationship to Defendant, e.g., Child, Sister, etc.**].

OUII-CR 4-137  
(2000 Supp.)

It is the burden of the State to prove beyond a reasonable doubt the absence of consent to the **(sexual intercourse)/[specify other sexual conduct]**.

Persons need not expressly announce their consent to engage in sexual activity for there to be consent. Consent can be given either through words or through actions that, when viewed in the light of all the surrounding circumstances, would demonstrate to a reasonable person that consent for the specific sexual activity had been given.

Consent is present when the evidence, in whatever form, is sufficient to demonstrate that a reasonable person would have believed that the alleged victim had affirmatively and freely given authorization to the act.

"Consent" means the affirmative, unambiguous and voluntary agreement to engage in a specific sexual activity during a sexual encounter. Consent can be revoked at any time.

Consent cannot be:

1. Given by an individual who:

- a. is asleep or is mentally or physically incapacitated either through the effect of drugs or alcohol or for any other reason, or
- b. is under duress, threat, coercion or force; or

2. Inferred under circumstances in which consent is not clear including, but not limited to:

- a. the absence of an individual saying "no" or "stop", or
- b. the existence of a prior or current relationship or sexual activity.

If there is evidence to suggest that the defendant reasonably believed that consent had been given, the State must demonstrate that such a belief was unreasonable under all of the circumstances. If you find that the State has failed to sustain its burden of proof beyond a reasonable doubt, then the defendant must be found not guilty.

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Statutory Authority: 21 O.S. Supp. 2017, § 113.

OUII-CR 4-138  
(2018 Supp.)

INSTRUCTION No. \_\_\_\_\_

You are instructed that as a matter of law a minor under the age of **fourteen/sixteen** is incapable of giving **consent/agreement** to engaging in sexual conduct which is otherwise prohibited by law and the **agreement/consent** of such minor to such activity should be disregarded by you in determining the question of the defendant's guilt.

OUJI-CR 4-138A  
(2018 Supp.)



Child Pornography - Any (visual depiction/(individual image) stored/contained in any format on any medium including but not limited to, film/(motion picture)/videotape/photograph/negative/(undeveloped film)/slide/(photographic product)/(reproduction of a photographic product) /play/performance in which a child under the age of 18 years (is engaged with any person, other than his/her spouse in)/observes any (act of sexual intercourse, which is normal or perverted)/(act of anal sodomy)/(act of sexual activity with an animal)/(act of sadomasochistic abuse, including flagellation/torture/[the condition of being fettered/bound/(physically restrained) in the context of sexual conduct])/(act of fellatio/cunnilingus)/(act of excretion in the context of sexual conduct)/[(lewd exhibition of the uncovered genitals in the context of masturbation/(sexual conduct))]/(lewd exhibition of the (uncovered genitals)/buttocks/(the breast of a female minor) where the lewd exhibition has the purpose of sexual stimulation of the viewer).

Reference: 21 O.S. 2011 & Supp. 2016, § 1024.1.

Force - Force means any force, no matter how slight, necessary to accomplish the act without the consent of the victim. The force necessary to constitute an element need not be actual physical force since fear, fright or coercion may take the place of actual physical force.

Reference: 21 O.S. Supp. 2016, § 111.

Inanimate Object - Not having the qualities associated with active, living organisms.

Genitals or Genitalia - The external sex organs.

Harmful to minors - That quality of any **description/exhibition/presentation/representation**, in whatever form, of **nudity/(sexual conduct or sexual excitement)/(sadomasochistic abuse)** when the **material/performance**, taken as a whole, has the following characteristics:

- (1) the average person eighteen (18) years of age or older applying contemporary community standards would find that the **material/performance** has a predominant tendency to appeal to a prurient interest in sex to minors, and
- (2) the average person eighteen (18) years of age or older applying contemporary community standards would find that the **material/performance depicts/describes nudity/(sexual conduct or sexual excitement)/(sadomasochistic abuse)** in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors, and
- (3) the **material/performance** lacks serious literary, scientific, medical, artistic, or political value for minors,

OR

Any **description/exhibition/presentation/representation**, in whatever form, of inappropriate violence.

Reference: 21 O.S. 2011, § 1040.75.

Knowing or Knowingly - Being aware of the existence of facts that cause the act to be criminal in nature. A person need not be aware of the applicable law to do an act "knowingly," but only need to be aware of the applicable facts.

Lascivious - Characterized by or expressing lust or lewdness.

Law Enforcement Activity - A person engages in "Law Enforcement Activity" when acting under the direction of the courts or

the direction or supervision of a law enforcement agency while investigating criminal activity.

Reference: 21 O.S. 2011, § 1021.1.

Lewd - Obscene, lustful, indecent, lascivious, lecherous.

Reference: 21 O.S. 2011, § 1030(6).

Obscene Material - Any representation, performance, depiction or description of sexual conduct in any form or on any medium including (still/undeveloped photographs)/(motion pictures)/(undeveloped film)/videotape/(optical/magnetic/(solid state) storage)(purely photographic product)/(reproduction of a photographic product in any book/pamphlet/magazine/publication).(electronic/photo-optical format):

First, in which there are **depictions/descriptions** of sexual conduct which are patently offensive as found by the average person applying contemporary community standards;

Second, which, taken as a whole, has as the dominant theme an appeal to prurient interest, as found by the average person applying contemporary community standards; and

Third, which a reasonable person would find that the **material/performance** when taken as a whole lacks serious literary, artistic, educational, political, or scientific purposes or value.

Reference: 21 O.S. 2011 & Supp. 2016, § 1024.1.

Performance - Any display, live or recorded, in any form or medium.

Reference: 21 O.S. 2011 & Supp. 2016, § 1024.1.

Private Parts - The genitals or sex organs.

Sexual Conduct -- Acts of sexual intercourse including any intercourse which is normal or perverted, actual or simulated.

**OR**

Acts of deviate sexual conduct, including oral and anal sodomy.

**OR**

Acts of masturbation.

**OR**

Acts of sadomasochistic abuse including but not limited to:

(1) **flagellation/torture by/upon** any person who is **nude/[clad in undergarments/(costume which is of a revealing nature)]**, or

(2) the condition of being **fettered/bound/(physically restrained)** on the part of one who is **nude/[clad in undergarments/(costume which is of a revealing nature)]**.

**OR**

Acts of excretion in a sexual context.

**OR**

Acts of exhibiting human genitals or pubic areas.

**[Sexual conduct includes acts performed alone/(between members of the same/opposite sex)/(between humans and animals) in an act of apparent sexual stimulation/gratification.]**

OUJI-CR 4-139  
(2017 SUPP.)

INSTRUCTION No. \_\_\_\_\_

The **defendant(s) is/are** charged with

**[robbery in the first/second degree]**

**[conjoint robbery]**

**[robbery with a dangerous weapon]**

of **[Name of Person Allegedly Robbed]** on **[Date]** in **[Name of County]** County, Oklahoma.

OUII-CR 4-140

(2000 Supp.)

No person may be convicted of robbery in the first degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, wrongful;

Second, taking;

Third, carrying away;

Fourth, personal property;

Fifth, of another;

Sixth, from the **person/(immediate presence)** of another;

Seventh, when, in the course of the robbery;

[Eighth, the defendant inflicted serious bodily injury upon the other person;]

[Eighth, the defendant threatened a person with serious bodily injury;]

[Eighth, the defendant intentionally put a person in fear of immediate serious bodily injury;]

[Eighth, the defendant committed/(threatened to commit) the crime of [Specify Felony] upon the other person].

OUJI-CR 4-141  
(2003 Supp.)

No person may be convicted of robbery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, wrongful;

Second, taking;

Third, carrying away;

Fourth, personal property;

Fifth, of another;

Sixth, from the **person/(immediate presence)** of another;

Seventh, by **force/fear**.

OUJI-CR 4-142

No person may be convicted of conjoint robbery unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, wrongful;

Second, taking;

Third, carrying away;

Fourth, personal property;

Fifth, of another;

Sixth, from the **person/(the immediate presence)** of another;

Seventh, by **force/fear**;

Eighth, committed by two or more persons.

OUII-CR 4-143

No person may be convicted of robbery with a dangerous weapon unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, wrongful;

Second, taking;

Third, carrying away;

Fourth, personal property;

Fifth, of another;

Sixth, from the **person/(the immediate presence)** of another;

Seventh, by **force/fear**;

Eighth, through use of a **(loaded/unloaded firearm)/(blank/ imitation firearm capable of raising in the mind of the person threatened with such device a fear that it is a real firearm)/(dangerous weapon)**.

OUII-CR 4-144



No person may be convicted of attempted robbery with a dangerous weapon unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, wrongfully;

Second, attempting to take;

Third, and carry away;

Fourth, personal property;

Fifth, of another;

Sixth, from the **person/(the immediate presence)** of another;

Seventh, by **force/fear**;

Eighth, through use of a **(loaded/unloaded firearm)/(blank/imitation firearm capable of raising in the mind of the person threatened with such device a fear that it is a real firearm)/(dangerous weapon)**.

OUII-CR 4-145

Carrying Away - Removing an article for the slightest distance. Carrying away is more than a mere change of position; it is a movement for purposes of permanent relocation.

References: *Cunningham v. District Ct. of Tulsa Co.*, 1967 OK CR 183, 432 P.2d 992; *Brinkley v. State*, 1936 OK CR 117, 61 P.2d 1023, 60 Okl. Cr. 106.

Dangerous Weapon - Any instrument likely to produce death or great bodily injury in the manner it is in fact used or attempted to be used.

References: *Swaim v. State*, 1977 OK CR 295, 569 P.2d 1009; *Hay v. State*, 1968 OK CR 209, 447 P.2d 447.

Fear (Second-Degree Robbery) (Select Applicable definition) -

- A. [Fear of unlawful injury, immediate or future, to the person of the one robbed.]
- B. [Fear of unlawful injury, immediate or future, to the property of the person robbed.]
- C. [Fear of unlawful injury, immediate or future, to the person or property of any relative or family member of the person robbed.]
- D. [Fear of immediate unlawful injury to the person or property of anyone in the company of the person robbed.]

Fear used only as a means of escape is not sufficient to establish robbery.

Reference: 21 O.S. 2011, § 794.

Firearm - Weapon from which a shot or projectile is discharged by force of a chemical explosive such as gunpowder. An airgun, such as a carbon dioxide gas-powered air pistol, is not a firearm within the meaning of this definition.

Note: Archery equipment, flare guns, underwater fishing guns, blank pistols are not **firearm(s)**.

References: 21 O.S. 2011, §§ 1289.3 et seq.; Black's Law Dictionary 570 (5th ed. 1979); *Thompson v. State*, 1971 OK CR 328, ¶ 8, 488 P.2d 944, 947 (*overruled on other grounds*, *Dolph v. State*, 1974 OK CR 46, ¶ 10, 520 P.2d 378, 380-81).

Force - Force, of any degree, used to obtain or to retain possession of property or to prevent or to overcome resistance to its taking. Force used only as a means of escape is not sufficient to establish robbery.

References: *Cannon v. State*, 71 Okl. Cr. 42, 107 P.2d 809 (1940); 21 O.S. 2011, §§ 792, 793.

Personal Property - Money, goods, chattels, effects, evidences of rights in action, and written instruments effecting a monetary obligation or right or title to property.

Reference: 21 O.S. 2011, § 103.

Serious Bodily Injury (First Degree Robbery)-- A bodily injury that is grave and not trivial which involves (select applicable factors): a substantial risk of death; unconsciousness; extreme physical pain; protracted and obvious disfigurement; protracted loss or impairment of the function of a bodily member, organ, or mental faculty, a bone fracture, injury to an internal or external organ of the body, sexual abuse or exploitation, chronic abuse, or torture. [If applicable, add the following: Bruising, swelling, and even a few stitches are not alone sufficient for a serious bodily injury].

References: *Harney v. State*, 2011 OK CR 10, ¶ 12, n.3, 256 P.3d 1002, 1005 n.3; *Owens v. State*, 2010 OK CR 1, 229 P.3d 1261; 21 O.S. 2011, § 797; 10A O.S. 2011, § 1-1-105 (31); 27A O.S. 2011, § 2-6-202.

OUJI-CR 4-146

No person may be convicted of abuse of a person entrusted to one's care unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, a **caretaker/person**;

[Second, **abused/(financially neglected)/neglected/(sexually abused)/exploited**;

Third, another person who was entrusted to **his/her** care].

**OR**

[First, a person knowingly caused/permitted another person who was entrusted to **his/her** care;

Second, to be **abused/(financially neglected)/neglected/(sexually abused)/exploited**].

[**Note - Use only if applicable: You are further instructed that consent shall not be a defense to this crime.**]

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Statutory Authority: 21 O.S. 2011, § 843.1.

OUII-CR 4-147  
(2019 Supp.)

No person may be convicted of verbal abuse of a person entrusted to one's care unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, a caretaker;

[Second, verbally abused;

Third, another person who was entrusted to **his/her** care].

**OR**

[Second, knowingly **caused/permitted** another person who was entrusted to **his/her** care;

Third, to be verbally abused.]

OUJI-CR 4-147A  
(2013 Supp.)

**Abuse** - **Causing/permitting the [infliction of (physical pain)/injury/ (sexual abuse)/(sexual exploitation)/(unreasonable restraint/confinement)/ (mental anguish)]/[deprivation of nutrition/clothing/shelter/(health care)/care/ services without which serious physical/mental injury is likely to occur to a vulnerable adult by a caretaker/(person providing services to a vulnerable adult)].**

Reference: 43A O.S. Supp. 2019, § 10-103(8).

**Vulnerable Adult** -- An incapacitated person or an individual who, because of physical or mental disability, including persons with Alzheimer's disease or other dementias, incapacity or other disability, is substantially impaired in **his/her** ability to provide adequately for **his/her** own care or custody, or is unable to manage **his/her** property and financial affairs effectively, or to meet essential requirements for mental or physical health or safety, or to protect **himself/herself** from abuse, verbal abuse, neglect, or exploitation without assistance from others.

Reference: 43A O.S. Supp. 2019, § 10-103(5).

**Caretaker** -- A person who has **[the responsibility for the (care of a vulnerable adult)/(financial management of the resources of a vulnerable adult as a result of a family relationship)]/[assumed the responsibility for the care of a vulnerable adult voluntarily/(by contract)/(as a result of the ties of friendship)]/[been appointed a guardian/ (limited guardian)/ conservator under the Oklahoma Guardianship and Conservatorship Act].**

Reference: 43A O.S. Supp. 2019, § 10-103(6).

**Elderly Person** -- A person who is sixty-two years of age or older.

Reference: 22 O.S. 2011, § 991a-15.

**Exploitation** -- An unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of another person through the use of **(undue influence) /coercion /harassment/duress/deception/ (false representation /pretense).**

Reference: 43A O.S. Supp. 2019, § 10-103(9).

**Incapacitated Person** -- Any **(person eighteen (18) years of age or older who is impaired by reason of mental or physical illness or disability, dementia or related disease, mental retardation, developmental disability or other cause and whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that he/she lacks the capacity to manage his/her financial resources or to meet essential requirements for his/her mental or physical health or safety without assistance)/(person for whom a guardian/(limited guardian)/conservator has been appointed pursuant to the Oklahoma Guardianship and Conservatorship Act).**

Reference: 43A O.S. Supp. 2019, § 10-103(4).

**Neglect** - **[The failure to provide protection for a vulnerable adult who is unable to protect his/her own interest]/[the failure to provide a vulnerable adult with adequate shelter/nutrition/(health care)/clothing]/[negligent acts/omissions that result in harm/(the unreasonable risk of harm) to a vulnerable adult through the action/inaction/(lack of supervision) by a caretaker providing direct services].**

Reference: 43A O.S. Supp. 2019, § 10-103(11).

**Financial Neglect** -- repeated instances by a **caretaker/(any person, who has assumed the role of financial management)** of failure to use the resources available to **restore/maintain** the health and physical well-being of a vulnerable adult, including, but not limited to **[Select applicable subparagraph]:**

- a. squandering/(negligently mismanaging) the money/property/accounts of a vulnerable adult,
- b. refusing to pay for necessities/utilities in a timely manner, or
- c. providing substandard care to a vulnerable adult despite the availability of adequate financial resources.

Reference: 43A O.S. Supp. 2019, § 10-103(10).

Sexual Abuse - **[(Oral/Anal/Vaginal penetration of a vulnerable adult by/through the union with the sexual organ of a caretaker/(person providing direct services to the vulnerable adult))/[anal/vaginal penetration of a vulnerable adult by a caretaker/(person providing direct services to the vulnerable adult) with any object]/[The touching/feeling of the body/(private parts) of a vulnerable adult for the purpose of sexual gratification by a caretaker/(person providing direct services to the vulnerable adult))/[Indecent exposure by a caretaker/(person providing direct services to a vulnerable adult)]].**

Reference: 43A O.S. Supp. 2019, § 10-103(12).

Verbal Abuse - The repeated use by a caretaker of **words/sounds/ language/actions/behaviors/(forms of communication)** that are calculated to **humiliate/intimidate/(cause fear/embarrassment/shame/degradation to)** the person entrusted to the care of the caretaker.

Reference: 43A O.S. Supp. 2019, § 10-103(16).

OUII-CR 4-148  
(2019 Supp.)

INSTRUCTION No. \_\_\_\_\_

The defendant is charged with arson in the **first/second/third/fourth** degree of **[Describe Premises, Property, etc.]** located at **[Address or Location]**, **[Name of County]** County, Oklahoma, on **[Date]**.

OUJI-CR 5-1  
(2000 Supp.)



No person may be convicted of arson in the first degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, a willful and malicious;

Second, (setting fire to)/burning/(destroying in whole or in part by use of any (explosive device)/accelerant/(ignition device)/ (heat-producing device/substance));

Third, (a building/structure)/(the contents of a building/structure);

Fourth, which was inhabited/occupied by one or more persons;

Fifth, caused/aided/counseled/procured by the defendant.

OR

First, (destroying in whole or part)/(causing to be burned/destroyed)/(aiding/counseling/procuring the burning/destruction of);

Second, (a building/structure)/(the contents of a building/structure);

Third, which was inhabited/occupied by one or more persons;

Fourth, while manufacturing/(attempting/endeavoring to manufacture) [specify controlled dangerous substance listed in 63 O.S. Supp. 2014, § 2-401].

OR

First, willfully and maliciously;

Second, (setting fire to)/burning another person.

OR

First, willfully and maliciously;

Second, causing another person to be burned;

Third, by the use of any (explosive device)/accelerant/(ignition device)/(heat-producing device/substance);.

OR

First, willfully and maliciously;

Second, aiding/counseling/procuring the burning of another person.

OR

First, (causing another person to be burned)/(aiding/counseling/procuring the burning of another person);

Second, while manufacturing/(attempting to manufacture) [specify controlled dangerous substance listed in

63 O.S. Supp. 2014, § 2-401].

OUJI-CR 5-2

INSTRUCTION No. \_\_\_\_\_

A building or structure is deemed to be occupied if it actually contains one or more persons at the time of the commission of the alleged crime. A building or structure is deemed to be inhabited if any part of it is normally used by any person for lodging.

OUJI-CR 5-3  
(2000 Supp.)

No person may be convicted of arson in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, a willful and malicious;

Second, **(setting fire to)/burning/(destroying in whole or in part by use of any explosive device/substance)/(destroying in whole or in part while manufacturing/(attempting to manufacture) [specify controlled dangerous substance listed in 63 O.S. Supp. 2014, § 2-401]);**

Third, **(a building/structure)/(the contents of a building/structure);**

Fourth, which was **uninhabited/unoccupied;**

Fifth, **caused/aided/counseled/procured** by the defendant.

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Statutory Authority: 21 O.S. 2011, § 1402.

The Committee interprets the statute strictly to require "willfully and maliciously" to apply to all the elements in the statute, including "while manufacturing or attempting to manufacture a controlled dangerous substance in violation of subsection G of Section 2-401 of Title 63 of the Oklahoma Statutes." *See State v. Davis*, 2011 OK CR 22, ¶ 5, 260 P.3d 194, 195 ("This Court is committed to the rule of strict construction in the application of criminal statutes."); *Durant v. State*, 2008 OK CR 17, ¶ 8, 188 P.3d 192, 194 ("The purpose of strict construction is not to reward those who commit acts which should be punishable. Rather, it is to ensure that when liberty is at stake, all citizens have fair and clear warning of what conduct is prohibited, and, equally important, the severity of punishment for any infraction.").

OUII-CR 5-4  
(2014 Supp.)

INSTRUCTION No. \_\_\_\_\_

A building or structure is deemed to be unoccupied if it contains no persons at the time of the alleged crime. A building or structure is deemed to be uninhabited if no part of the building or structure is normally used by any person for lodging.

OUJI-CR 5-5  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of arson in the third degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, a willful and malicious;

Second, **(setting fire to)/burning/(destroying in whole or in part by use of any explosive device/substance)**;

Third, any real or personal property valued at \$50 or more;

Fourth, **caused/aided/counseled/procured** by the defendant.

OUII-CR 5-6  
(2000 Supp.)

No person may be convicted of arson in the third degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, a willful and malicious;

Second, **(setting fire to)/burning/(destroying in whole or in part by use of any explosive device/substance)**;

Third, any **building(s)/property/chattels**;

Fourth, which **was/were** insured at the time of the commission of the alleged offense;

Fifth, with intent to **defraud/injure** an insurer;

Sixth, **caused/aided/counseled/procured** by the defendant.

OUJI-CR 5-7  
(2000 Supp.)

No person may be convicted of arson in the fourth degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, a willful and malicious;

Second, attempt to **(set fire to)/burn/(destroy in whole or in part by the use of any explosive device or substance)**;

Third, **(any building/structure)/(the contents of any (building/structure))/(any property that is insured)/(any real/personal property valued at \$50 or more)**;

Fourth, **made/aided/counseled/procured** by the defendant.

OUJI-CR 5-8  
(2000 Supp.)



No person may be convicted of arson in the fourth degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, a willful and malicious;

Second, **placing/distributing**;

Third, of any **flammable/explosive/combustible material/substance/device**;

Fourth, **in/on (any building/structure)/(the contents of any building/ structure)/(any property that is insured)/(any real/personal property valued at \$50 or more)**;

Fifth, by **(an arrangement)/(a preparation)** with intent eventually to **(set fire to)/burn/(procure the setting fire to)/(procure the burning of)** such property;

Sixth, such **placing/distributing** was **performed/procured** by the defendant.

OUII-CR 5-9  
(2000 Supp.)

No person may be convicted of endangerment of life unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, endangering a human life;

Second, while in the commission of;

Third, [Set forth the elements of Arson in the First, Second, Third, or the Fourth Degree from OUI-CR 5-2, 5-4, 5-7, 5-8, or 5-9];

[Fourth, and personal injury resulted].

OUI-CR 5-9A  
(2000 Supp.)

Malicious - A wish to vex, annoy or injure.

References: State v. McCray, 15 Okl. Cr. 316, 176 P. 418 (1919); 21 O.S. 1991, § 95.

Willful - Purposeful. It does not require any intent to violate law, or to injure another, or to acquire any advantage.

Reference: 21 O.S. 1991, § 92.

OUII-CR 5-10  
(2000 Supp.)

The defendant is charged with:

**[burglary in the first/second degree]**

**[burglary with explosives]**

**[illegal entry]**

**[breaking and entering without permission]**

o f **[Description of Premises]**, located at **[Address or Location]**, **[Name of County]** County, Oklahoma,  
(owned/occupied by)/(in the possession of) **[Name of Owner, Occupier, Possessor]** on **[Date]**.

OUII-CR 5-11  
(2000 Supp.)

No person may be convicted of burglary in the first degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, breaking;

Second, entering;

Third, a dwelling;

Fourth, of another;

Fifth, in which a human is present;

Sixth, with intent to commit some crime therein;

OUII-CR 5-12  
(2000 Supp.)

No person may be convicted of burglary in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, breaking;

Second, entering;

Third, **a/an (dwelling house where no human being was present at the time)/(commercial building)/(any part of a building)/room/booth/tent/ (railroad car)/structure/erection;**

Fourth, of another;

Fifth, in which property is kept;

Sixth, with the intent to **steal/(commit any felony)**.

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Statutory Authority: 21 O.S. Supp. 2019, § 1435 (A).

In contrast to section 1431, the second-degree burglary statute does not specify that ownership or possession of the structure, upon which a breaking and entering is perpetrated must be vested in another. The Commission has concluded, however, that since at common law the proscription of burglary was intended to safeguard possessory rights, R. Perkins, *Criminal Law* 206 (2d ed. 1969), a right of entry negates the possibility of prosecution for burglary. Although no Oklahoma cases have addressed this question, the Supreme Court of California, in construing a statute defining as burglary the entering into any dwelling, held that a right of entry to an apartment dispels the possibility of prosecution for burglary when one cotenant forcibly entered the apartment for the purpose of feloniously assaulting another cotenant. In reversing the defendant's conviction of burglary, the court observed:

To hold otherwise could lead to potentially absurd results. If a person can be convicted for burglarizing his own home, he could violate [the burglary statute] by calmly entering his own house with intent to forge a check. A narcotics addict could be convicted of burglary by walking into his house to administer a dose of heroin to himself. Since a burglary is committed upon entry, both could be convicted even if they changed their minds and did not commit the intended crimes.

*People v. Gauze*, 125 Cal. Rptr. 773, 777, 542 P.2d 1365, 1369 (1975).

OUII-CR 5-13  
(2019 Supp.)

No person may be convicted of burglary in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, breaking;

Second, a **(coin operated)/vending machine/device**;

Third, of another;

Fourth, with the intent to **steal/(commit any felony)**.

---

Statutory Authority: 21 O.S. Supp. 2019, § 1435 (A).

In the opinion of the Commission, section 1435 creates a separate crime with different elements, still called burglary in the second degree, when the place burglarized is a vending machine. The Commission has concluded that "breaks into" is synonymous with "forcibly opens" so that the language indicates only one element. The Commission has also decided that "breaks into and forcibly opens" does not imply an "entry" as a separate element of the crime. The Commission has concluded that the court would decide that "breaks into or forcibly opens" means the use of force, however slight, to remove an obstruction to entry, *Matthews v. State*, 1975 OK CR 4, ¶ 18, 530 P.2d 1044, 1047 (washing machine coin box opened with key); *Hudson v. State*, 1974 OK CR 161, ¶ 12, 525 P.2d 1380, 1382-83 (same), but that actually reaching inside the machine to fetch the contents or money is not an element of the crime. The Commission has reached this conclusion because the other crime created by section 1435 has the specific language "breaks and enters," whereas the vending machine crime does not, although the word "into" possibly could be interpreted to require entry.

OUII-CR 5-14  
(2019 Supp.)

No person may be convicted of burglary in the third degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, breaking;

Second, entering;

Third, **a/an automobile/truck/trailer/vessel**;

Fourth, of another;

Fifth, in which property is kept;

Sixth, with the intent to **(steal any property in the automobile/truck/ trailer/vessel)/(commit any felony)**.

---

Statutory Authority: 21 O.S. Supp. 2019, § 1435(B).

OUII-CR 5-14A  
(2019 Supp.)



No person may be convicted of burglary by the use of explosives unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, breaking;

Second, entering;

Third, a **building/(railway car)/vehicle/structure**;

Fourth, of another;

Fifth, **(by opening)/(by attempting to open)/(with the intent to open)** a receptacle in which property is kept;

Sixth, by the use of explosives;

Seventh, with the intent to **steal/(commit any felony)**.

OUII-CR 5-15

No person may be convicted of illegal entry unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, entering;

Second, a/an **building/booth/tent/warehouse/(railroad car)/vessel/structure/ erection**;

Third, of another;

Fourth, with the intent to commit **(any felony)/larceny/(malicious injury/defacing/destruction of real/personal property of another)**.

OUII-CR 5-16

No person may be convicted of breaking and entering without permission unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, intentionally;

Third, breaking;

Fourth, entering;

Fifth, a **building/trailer/vessel/(premises used as a dwelling)**;

Sixth, without the permission of its **owner/occupant**;

Seventh, without the intent to commit any crime in the **building/trailer/vessel/ (premises used as a dwelling)**.

OUJI-CR 5-17

Breaking - Any act of physical force, however slight, by which obstructions to entering are removed.

References: Pack v. State, 819 P.2d 280, 283 (Okl. Cr. 1991); Williams v. State, 983, 986 (Okl. Cr. 1988); Lewis v. State, 732 P.2d 1, 2 (Okl. Cr. 1987); 21 O.S. 1991, § 1491.

Dwelling - Every house, building, or enclosed structure, any part of which has usually been occupied by any **person(s)** lodging therein; or any enclosed structure joined to and immediately connected with a house.

References: Tate v. State, 556 P.2d 1014 (Okl. Cr. 1976); Sallee v. State, 51 Okl. Cr. 414, 1 P.2d 794 (1931); Harris v. State, 41 Okl. Cr. 121, 271 P. 959 (1928); Simpson v. State, 5 Okl. Cr. 57, 113 P. 549 (1911); 21 O.S. 1991, § 1439.

Entering - An entry which occurs when any part of a person's body is within the **[Name of Object or Structure]**.

**[However, if a tool or an instrument is used and inserted inside, without any part of the person being within the object or structure, it is an entry if the insertion of the tool or instrument is capable of completing the purpose of the intended crime.]**

References: W. LaFave & A. Scott, Criminal Law § 96, at 710 (1972); R. Perkins, Criminal Law 198, 199 (2d ed. 1969).

Intent to Steal - Intent permanently to deprive the person in rightful possession of property without the possessor's consent.

References: Alvarado v. State, 38 Okl. Cr. 360, 261 P. 983 (1927); Sullivan v. State, 7 Okl. Cr. 307, 123 P. 569 (1912).

Of Another - Of any person who is in rightful possession of the property.

References: Calhoun v. State, 820 P.2d 819, 821 (Okl. Cr. 1991); Byington v. State, 363 P.2d 301 (Okl. Cr. 1961); Sallee v. State, 51 Okl. Cr. 414, 1 P.2d 794 (1931); W. LaFave & A. Scott, Criminal Law § 96, at 712 (1972).

Confederate - One who assists in a plot.

OUJI-CR 5-18

The defendant is charged with **felony/misdemeanor** embezzlement of **[Description of Property, Amount, etc.]** on **[Date]** **(owned by)/(entrusted to him/her/them by)** **[Name of Owner, Employer, etc.]** in **[Name of County]** County, Oklahoma.

Under 21 O.S. Supp. 2002, § 1451(B), the crime of embezzlement is a misdemeanor if the value of the property embezzled is less than \$500, and it is a felony if the value of the property embezzled is \$500 or more.

Embezzlement is basically a crime against ownership, since the defendant has acquired physical possession by lawful means. If the defendant unlawfully acquired physical possession, he should have been charged with larceny, a crime against possession, not with embezzlement. The usual case involves entrustment of property by the owner to a person who embezzles the property. The language "owned by" is appropriate here. Situations arise, however, in which an agent embezzles money received from a principal but under circumstances that make it inappropriate to say that the principal is the owner of the property. *See, e.g., State v. Harrison*, 1989 OK CR 27, ¶ 5, 777 P.2d 1343, 1345 (embezzlement statute covered employer who withheld taxes on behalf of the State but refused to pay them over to the State); *Wallen v. State*, 1961 OK CR 110, ¶ 1, 367 P.2d 516, 517 (Justice of the Peace failed to pay fines he collected into the county treasury); *Wiley v. State*, 1960 OK CR 4, ¶¶ 8-10, 349 P.2d 30, 34 (assistant county attorney received fines from traffic violators); *Waldock v. State*, 42 Okl. Cr. 331, 333-34, 276 P. 509, 511 (1929) (trustee of county received proceeds of bond issue). In these latter situations, the language "entrusted to him by" is more appropriate.

(2005 Supp.)

OUII-CR 5-19

No person may be convicted of embezzlement unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, fraudulently;

Second, appropriated;

Third, personal property;

Fourth, with a value of (less than \$1,000)/(\$1,000-\$2,499.99)/(\$2,500-\$14,999.99)/(\$15,000 or more);

Fifth, of a **person/(legal entity)**;

Sixth, to any use or purpose not intended or authorized by its owner;

Seventh, where the property was legally obtained; and

**[Eighth, the property was entrusted to the defendant for a specific purpose/use/disposition, including any funds "held in trust" for any purpose].**

**[Eighth, the defendant obtained the property by virtue of a power of attorney for the sale/transfer of the property].**

**[Eighth, the property was controlled/possessed for the use of another person].**

**[Eighth, the property was to be used for a public/benevolent purpose].**

**[Eighth, the defendant diverted money appropriated by law from the purpose and object of the appropriation].**

**[Eighth, the defendant failed/refused to pay over to the state/(Specify Other Appropriate Authority) any tax/(Specify Other Type of Monies) collected in accordance with state law; and**

**Ninth, the defendant appropriated the tax/(Specify Other Type of Monies) for (his/her own use)/(the use of another person)].**

**[Eighth, the defendant possessed the property for the purpose of transportation without regard to whether packages containing the property have been broken].**

**[Eighth, the defendant removed crops from leased/rented premises with the intent to deprive the owner/landlord of rent due from the premises].**

**[Eighth, the defendant fraudulently appropriated rent from leased/rented premises to himself/herself/(any person)].**

**[Eighth, the property was possessed/controlled by virtue of a lease/rental agreement; and**

**Ninth, the defendant willfully/intentionally did not return the property within 10 days after the agreement expired].**

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Statutory Authority: 21 O.S. Supp. 2019, § 1451.

If the prosecution seeks to aggregate the value of multiple offenses, OUJI-CR 5-90A, *infra*, should also be used.

The third element indicates that the property which is subject to embezzlement is personal property, not real property. The statutory language does not specify personal property, but merely "property." Basic research into Oklahoma cases has not revealed a case addressing this question. Only a few cases in the United States have dealt with the specific question of whether real property is covered by the embezzlement crime. *See People v. Roland*, 134 Cal. App. 675, 26 P.2d 517 (1933) (real property is subject to embezzlement); *Manning v. State*, 175 Ga. 875, 166 S.E. 658 (1932); *State v. Clark*, 60 Ohio App. 367, 21 N.E.2d 484 (1938) (real property is not subject to embezzlement). Even the treatise writers appear divided on the question. R. Perkins, *Criminal Law* 291 (2d ed. 1969) and W. Clark & W. Marshall, *A Treatise on the Law of Crimes* 904-07 (7th ed. 1967) imply that real property cannot be embezzled, whereas W. LaFave & A. Scott, *Criminal Law* § 89, at 646-647 (1972), state that, on principle, conviction for embezzlement of real property should be possible.

The Committee has concluded that real property was not meant to be included within the embezzlement statutes of Oklahoma. The Committee reached this conclusion for several reasons. First, embezzlement historically has been used to fill the gaps opened by interpretation of common law larceny. Larceny applies to personal property only because real property cannot be taken and carried away. Second, the punishment for embezzlement in Oklahoma is correlated to the punishment for larceny. 21 O.S. 2011, § 1462. Third, the common law definition is to be followed, in the opinion of the Commission, unless the Legislature has clearly indicated otherwise. If the Legislature had meant to expand embezzlement, it should have used the words "real or personal property."

The seventh element presents the concept of lawful acquisition by the person who has embezzled. If the property is wrongfully acquired initially, the crime is larceny, not embezzlement. *Ennis v. State*, 1917 OK CR 150, 13 Okl. Cr. 675, 167 P. 229; *Bivens v. State*, 1912 OK CR 11, 6 Okl. Cr. 521, 120 P. 1033; *Flohr v. Territory*, 1904 OK CR 93, 14 Okl. 477, 78 P. 565.

In light of the statutory language of section 1451, a question arises whether the Legislature intended to abolish the distinction made at common law between custody and possession. At common law if a person merely acquired custody of property, *i.e.*, physical possession, and then converted the property, the person had committed larceny but not embezzlement. The common law reasoning is that a person who has custody does not have legal possession of the property; hence, the conversion is a trespassory taking, rather than an appropriation. Taking is an element of larceny, whereas appropriating is an element of embezzlement. R. Perkins, *Criminal Law* 289 (2d ed. 1969). The language of the statute is susceptible to a construction indicating that it is immaterial whether the embezzler had custody or possession when he converted.

Conflicting lines of cases decided under prior Oklahoma statutes exist in Oklahoma concerning the custody/possession dichotomy. In *Cunningham v. District Court of Tulsa*, 1967 OK CR 183, 432 P.2d 992, and *Gibson v. State*, 1958 OK CR 74, 328 P.2d 718, *overruled on other grounds*, *Parker v. State*, 1996 OK CR 19, n.4, 917 P.2d 980, 986, the distinction between custody and possession is drawn. In *Smith v. State*, 1929 OK CR, 42 Okl. Cr. 136, 275 P. 359, the distinction is repudiated. Although *Cunningham*, *Gibson*, and *Smith* construe separate statutes, the language of the statutes is similar. Former section 1452 read, "in his possession or under his control"; former section 1454 read, "entrusted with or having in his control"; former section 1456 read, "has come into his control or care"; and former section 1453 read, "having under his control." The Commission has concluded that the reasoning of the court in the *Cunningham* and *Gibson* cases should be adopted when construing the embezzlement statutes in order to preserve the custody/possession distinction.

The fourth element is included to indicate whether the defendant is charged with felony or misdemeanor embezzlement and for the purposes of determining the appropriate range of punishment.

Some overlap with the larceny statutes may result from the following provision at the end of 21 O.S. Supp. 2019, § 1451(A)(7): "without regard to whether packages containing the property have been broken." The common law courts hold that misappropriation of the entire package delivered to a carrier is not larceny because the carrier has lawful possession. Misappropriation of the entire package is therefore embezzlement. If the

carrier opened the package and took an item in the package, however, the courts held that larceny has been committed because the carrier did not have lawful possession of the individual items in the package. This is known as the "breaking bulk" doctrine. However, under section 1451(A)(7) this latter factual situation is also embezzlement. The language of section 1451(A)(7) indicates that embezzlement is committed whether the carrier takes the whole package or individual items. R. Perkins, *Criminal Law* 260-62 (2d ed. 1969).

OUII-CR 5-20  
(2019 Supp.)



No person may be convicted of embezzlement unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, secreted;

Second, personal property;

Third, with a value of (less than \$1,000)/(\$1,000-\$2,499.99)/(\$2,500-\$14,999.99)/(\$15,000 or more);

Fourth, of a **person/(legal entity)**;

Fifth, with fraudulent intent to appropriate;

Sixth, to any use or purpose not intended or authorized by its owner;

Seventh, where the property was legally obtained; and

**[Eighth, the property was entrusted to the defendant for a specific purpose/use/disposition, including any funds "held in trust" for any purpose].**

**[Eighth, the defendant obtained the property by virtue of a power of attorney for the sale/transfer of the property].**

**[Eighth, the property was controlled/possessed for the use of another person].**

**[Eighth, the property was to be used for a public/benevolent purpose].**

**[Eighth, the defendant diverted money appropriated by law from the purpose and object of the appropriation].**

**[Eighth, the defendant failed/refused to pay over to the state/(Specify Other Appropriate Authority) any tax/ (Specify Other Type of Monies) collected in accordance with state law; and**

**Ninth, the defendant appropriated the tax/(Specify Other Type of Monies) for (his/her own use)/(the use of another person)].**

**[Eighth, the defendant possessed the property for the purpose of transportation without regard to whether packages containing the property have been broken].**

**[Eighth, the defendant removed crops from leased/rented premises with the intent to deprive the owner/landlord of rent due from the premises].**

**[Eighth, the defendant fraudulently appropriated rent from leased/rented premises to himself/herself/(any person)].**

**[Eighth, the property was possessed/controlled by virtue of a lease/rental agreement; and**

**Ninth, the defendant willfully/intentionally did not return the property within 10 days after the agreement expired].**

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Statutory Authority: 21 O.S. Supp. 2019, § 1451.



INSTRUCTION No. \_\_\_\_\_

OUJI-CR 5-22  
(2005 Supp.)

INSTRUCTION No. \_\_\_\_\_

OUJI-CR 5-23  
(2005 Supp.)

INSTRUCTION No. \_\_\_\_\_

OUJI-CR 5-24  
(2005 Supp.)

INSTRUCTION No. \_\_\_\_\_

OUJI-CR 5-25  
(2005 Supp.)

INSTRUCTION No. \_\_\_\_\_

OUJI-CR 5-26  
(2005 Supp.)

INSTRUCTION No. \_\_\_\_\_

OUJI-CR 5-27  
(2005 Supp.)



INSTRUCTION No. \_\_\_\_\_

OUJI-CR 5-28  
(2005 Supp.)

No person may be convicted of embezzlement by public officer unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the defendant is a [deputy/employee of a] county/state officer; and

Second, the defendant diverted;

Third, any money appropriated by law;

Fourth, from the purpose and object of the appropriation;

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Statutory Authority: 21 O.S. Supp. 2004, § 1451(C).

(2005 Supp.)

OUII-CR 5-29

(2005 Supp.)

Appropriate - Convert to a use not authorized by the true owner or possessor.

References: Terry v. Water Improvement Dist. No. 5, 1937 OK 82, 179 Okl. 106, 64 P.2d 904 (1937); Blake v. State, 1916 OK CR 91, 12 Okl. Cr. 549, 160 P. 30.

Fraudulent - With intent to deprive wrongfully the owner or the person who entrusted the property.

References: Smith v. State, 78 Okl. Cr. 343, 148 P.2d 206 (1944); R. Perkins, Criminal Law 293 (2d ed. 1969).

Personal Property - Money, goods, chattels, effects, evidences of rights in action, and written instruments effecting a monetary obligation or right or title to property.

Reference: 21 O.S. 2001, § 103.

Secrete - To conceal or secretly transfer.

Reference: Black's Law Dictionary 1382 (8th ed. 2004).

Value - Fair market value or reasonable selling price.

Reference: 21 O.S. 2001, § 1462.

OUII-CR 5-30

INSTRUCTION No. \_\_\_\_\_

The defendant is charged with **extortion/(attempted extortion)/(extortion by letter)** of **[Description of Property, etc.]** on **[Date]** from **[Person From Whom Property Allegedly Extorted]** in **[Name of County]** County, Oklahoma.

OUJI-CR 5-31

No person may be convicted of **extortion/(attempted extortion)** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **obtaining/(attempting to obtain)**;

Second, **property/(a signature to a writing transferring property)/(a signature to a writing creating a debt/demand/charge/[right of action])**;

Third, of another;

Fourth, with the consent of the other person;

Fifth, induced by use of **force/threat**.

OUII-CR 5-32

A person has been threatened when that person has been put in fear of:

**[unlawful injury to his/her person/property]**

**[unlawful personal injury to his/her relatives/(family members)]**

**[unlawful injury to the property of a relative/(family member)]**

**[accusation of a crime against him/her]**

**[accusation of a crime against his/her relatives/(family members)]**

**[exposure of his/her deformity/disgrace]**

**[imputation of a (deformity in)/(disgrace to) him/her]**

**[exposure of a relative's/(family member's) deformity/ disgrace]**

**[imputation of a deformity/disgrace to a relative/(family member)]**

**[exposure of his/her secret]**

**[exposure of a relative's/(family member's) secret].**

OUJI-CR 5-33

No person may be convicted of extortion unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, obtaining;

Second, **property/(a signature to a writing transferring property)/(a signature to a writing creating a debt/demand/charge/[right of action])**;

Third, of another;

Fourth, with the consent of the other person;

Fifth, under color of official right by an official misusing **his/her** office.

OUII-CR 5-34

No person may be convicted of felony extortion by letter unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, sending;

Second, a **letter/writing**;

Third, with intent to obtain;

Fourth, **property/(a signature to a writing transferring property)/(a signature to a writing creating a debt/demand/charge/[right of action])**;

Fifth, of another;

Sixth, with the consent of the other person;

Seventh, to be induced by use of **threat(s)**.

OUII-CR 5-35



INSTRUCTION No. \_\_\_\_\_

Personal Property - Includes money, goods, chattels, effects, evidences of rights in action, and written instruments effecting a monetary obligation or right or title to property.

Reference: 21 O.S. 1991, § 103.

OUJI-CR 5-36

The defendant is charged with

**[false pretense of (Description of Property, Money, etc.)]**

**[attempted false pretense of (Description of Property, Money, etc.)]**

**[false pretense for alleged charitable purposes of (Description of Property, Money, etc.)]**

**[false pretense by false negotiable paper of (Description of Property, Money, etc.)]**

**[false personation]**

**[assault while masked]**

**[false claim for insurance]**

**[home repair fraud]**

**[credit/debit card theft]**

**[possession of credit/debit card]**

of [Description of Property, Money, etc.] on [Date] obtained from [Name Person Allegedly Obtained From] in [Name of County] County, Oklahoma.

OUII-CR 5-37

No person may be convicted of false pretense unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, obtained title;

Second, to **money/property/(a valuable thing)**;

Third, of another;

Fourth, valued (**less than \$1,000**)/(**\$1,000-\$2,499.99**)/(**\$2,500-\$14,999.99**)/(**\$15,000 or more**);

Fifth, by means of a (**trick or deception**)/(**false representation**)/ (**confidence game**)/(**false check**)/(**false written/printed/ engraved instrument**)/ (**spurious coin**);

Sixth, known by the defendant to be **false/spurious/(a trick or deception)**;

Seventh, with intent to cheat and defraud.

OUJI-CR 5-38  
(2019 Supp.)

No person may be convicted of attempted false pretense unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, attempted to obtain title;

Second, to **money/property/(a valuable thing)**;

Third, of another;

Fourth, valued at **(less than \$1,000)/(\$1,000-\$2,499.99)/(\$2,500-\$14,999.99)/(\$15,000 or more)**;

Fifth, by means of a **(trick or deception)/(false representation)/ (confidence game)/(false check)/(false written/printed/ engraved instrument)/ (spurious coin)**;

Sixth, known by the defendant to be **false/spurious/(a trick or deception)**;

Seventh, with intent to cheat and defraud.

OUJI-CR 5-39

(2019 Supp.)

No person may be convicted of false pretense unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, obtained title;

Second, to **money/property/(a valuable thing)**;

Third, of another;

Fourth, by means of two or more false checks written for a total amount of **(\$1,000-\$2,499.99)/(\$2,500-\$14,999.99)/(\$15,000 or more)**;

Fifth, known by the defendant to be false;

Sixth, in pursuance of a common scheme;

Seventh, with intent to cheat and defraud.

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Statutory Authority: 21 O.S. 2011 & Supp. 2019, §§ 1541.1, 1541.2, 1541.3.

Two instructions in addition to the attempt instruction are presented under the heading of Felony False Pretense because two sections, 1541.2 and 1541.3, create felony false-pretense crimes. Although the language of section 1541.3 is different from the language of sections 1541.1 and 1541.2, it was the opinion of the Commission that, since these three sections are part of the same legislation, section 1541.3 does not provide a different definition of false pretense. Rather, the Commission has concluded that section 1541.3 is a statute of classification that uses the definition of "false pretense" given by section 1541.1. The elements of the two false-pretense crimes are therefore identical, with the exception of the specific aggravating facts indicated in the fourth element and the means used to accomplish the intended purpose in the fifth element.

The act of obtaining made punishable by the false-pretense crimes involves the passage of title to the accused from the person who has been deceived. As the element of taking in larceny encompasses the concept of transfer of possession, so the element of obtaining in false pretense encompasses the concept of transfer of title. Whether or not title has passed to the accused is primarily a question of the intent of the parties to the transaction, especially the intent of the victim. If the victim meant only to transfer possession, the crime is larceny by fraud. *Braswell v. State*, 1964 OK CR 28, ¶ 10, 389 P.2d 998, 1001; *Warren v. State*, 1950 OK CR 162, 226 P.2d 320, 93 Okl. Cr. 166.

The second element indicates what must be obtained in order to constitute false pretense for the purpose of sections 1541.1 through 1541.3. The statutory language reads "money, property or valuable thing." The word "money" presents no difficulty. *Mason v. State*, 1923 OK CR 62, 212 P. 1028, 23 Okl. Cr. 111 (1923). The words "valuable thing" have expanded the protection of false-pretense to include, for example, telephone service and the cancellation of a promissory note and chattel mortgage. *Stokes v. State*, 1961 OK CR 76, ¶ 17, 366 P.2d 425, 430; *Bright v. State*, 1943 OK CR 17, 134 P.2d 150, 76 Okl. Cr. 67. Nothing of value has been obtained, however, when the accused gives a false check for a pre-existing debt. The debt simply is not satisfied by the check and still exists. *Jones v. State*, 1913 OK CR 155, 132 P. 914, 9 Okl. Cr. 621.

The word "property" has been used without any descriptive adjective in the instruction. The issue is thereby raised as to whether the element should be limited to personal property, or whether real property is protected by the false-pretense statutes. No Oklahoma case has dealt with the issue, and cases in American jurisdictions are

split on the issue. W. LaFare & A. Scott, *Criminal Law* § 90, at 665 (1972).

False pretense, like embezzlement, is a statutory crime created to cover situations not punishable under common law interpretations of larceny. Larceny is limited to personal property. If the legislative intent with respect to embezzlement excluded real property, as concluded in the commentary following the embezzlement instructions, it would follow that the Legislature also intended to exclude real property from the protection of the false-pretense statutes. On the other hand, 21 O.S. 2011, § 104, defines "property" as including both real and personal property.

The issue may actually be moot, because the Court of Criminal Appeals has held that the deed to real property is personal property possessing a value equivalent to the value of the land it represents. Thus, a person could be convicted of larceny when the property allegedly taken is a deed to real property. *State v. McCray*, 1919 OK CR 7, 177 P. 127, 15 Okl. Cr. 374 (construing section 1709). It would therefore appear that a person who obtains a deed transferring title to real property through false representations has obtained personal property. The person should then be subject to prosecution for false pretense.

The Commission has decided to use only the word "property" in the instructions on false pretenses. The Commission leaves the precise question raised to further court interpretation and decision.

The language "of another" is used in the third element to promote consistency of language with the larceny and embezzlement instructions, although the statutory language actually reads "any person, firm or corporation."

The fourth elements for both sections 1541.2 and 1541.3 are similar. Under section 1541.2, the property obtained by the defendant must be valued at more than \$1,000, whereas, under section 1541.3, the total value of the checks must be more than \$50 \$2,000, although the amount of each separate check need not equal more than \$50 \$1,000. *Morris v. State*, 1977 OK CR 267, ¶ 9, 568 P.2d 1303, 1305 (amount in statute at the time was \$20). Although the defendant is guilty of a felony if the amount obtained or total value of the checks is \$2,000 or more, the range of punishment is dependent on whether the amount obtained or total value of the checks is more or less than \$1,000 \$2,500 as well as \$15,000.

The fifth element lists the alternative means by which the deception can be accomplished. The Oklahoma Court of Criminal Appeals held in *Broadway v. State*, 1991 OK CR 113, ¶ 7, 818 P.2d 1253, 1255, that the crime of false-pretense may be committed by means other than a "statement," such as by a trick, deception, false or fraudulent representation, or by a pretense. The trial should select the appropriate means of deception in the instruction so that it fits the actual facts of the case being tried. The crime created by section 1541.3 can be committed only by means of false checks. Therefore, the fourth element of the instruction for section 1541.3 lists only that method of deception.

The fifth element of section 1541.2 and the fourth element of section 1541.3 indicate that the representation or check must be false.

The sixth element indicates that the defendant must know that a false representation has been made or a false check has been given. Although the statutory language does not indicate explicitly that the defendant must know that the representation or check is false, section 1541.4 creates a presumption of knowledge of lack of sufficient funds to pay the check if it is not paid within five days from the date the check is presented for payment. The presumption of section 1541.4 in conjunction with the general understanding of the elements of false pretense would indicate that the representation or check must be known to be false by defendant. *Ross v. State*, 1977 OK CR 340, ¶ 7, 572 P.2d 1001, 1003; W. LaFare & A. Scott, *Criminal Law* § 90, at 666 (1972); R. Perkins, *Criminal Law* 309 (2d ed. 1969).

In addition to the mens rea of knowledge concerning the falseness of the representation or check, the defendant must also have the intent to cheat and defraud. This is the specific mens rea of the crimes of false pretense.

*Dunaway v. State*, 1977 OK CR 86, ¶ 9, 561 P.2d 103, 106; *Moore v. State*, 1952 OK CR 140, 250 P.2d 46, 96 Okl. Cr. 118; *Beach v. State*, 1924 OK CR 187, 230 P. 758, 28 Okl. Cr. 348. Section 1541.4 also creates a presumption of intent to defraud if the defendant fails to pay the check within the specified period.

Section 1541.1 also creates a specific attempted-false-pretense crime. OUJI-CR 5-39 has been drafted for this offense. The only variance between the false-pretense instruction and the attempted-false-pretense instruction is in the first element where "attempting to obtain title" is substituted for "obtaining title."

Since a specific attempt statute exists for false pretense under 21 O.S. ~~2004~~ 2011, § 1541.1, the State is prohibited from charging an attempted false pretense under the general attempt statutes. *See Ex parte Smith*, 1952 OK CR 81, 246 P.2d 389, 95 Okl. Cr. 370.

OUJI-CR 5-40  
(2019 Supp.)

No person may be convicted of false pretense unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, obtained title;

Second, to **money/property/(a valuable thing)**;

Third, of another;

Fourth, valued at less than \$1,000;

Fifth, by means of a **(trick or deception)/(false representation)/ (confidence game)/(false check)/(false written/ printed/engraved instrument)/(spurious coin)**;

Sixth, known by the defendant to be **false/spurious/(a trick or deception)**;

Seventh, with intent to cheat and defraud.

OUII-CR 5-41  
(2019 Supp.)



No person may be convicted of attempted false pretense unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, attempted to obtain title;

Second, to **money/property/(a valuable thing)**;

Third, of another;

Fourth, valued at less than \$1,000;

Fifth, by means of a **(trick or deception)/(false representation)/ (confidence game)/(false check)/(false written/printed/engraved instrument)/(spurious coin)**;

Sixth, known by the defendant to be **false/spurious/(a trick or deception)**;

Seventh, with intent to cheat and defraud.

OUII-CR 5-42

(2019 Supp.)

A false or bogus check is a **check/order** which is not honored because **[of insufficient funds of the maker to pay the same]/[the check or order was drawn on a closed/nonexistent account]** when the **check/order** was given:

in exchange for **money/property/(a benefit/(thing of value))**.

as payment made to a landlord under a **lease/(rental agreement)**.

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Statutory Authority: 21 O.S. Supp. 2014, § 1541.4.

The elements for the misdemeanor false-pretense crime under section 1541.1 are identical to the elements of the felony false-pretense crime under section 1541.2 except for the fourth element. The statutory language of section 1541.1 indicates that the value of the property must be alleged and proved to be \$500 or less. Hence, if a prosecutor is uncertain as to the value of the property, the prosecutor should charge the felony crime. If the facts at trial indicate that the property is of a value of \$500 or less, the accused can then be convicted of the misdemeanor, because misdemeanor false pretense is a lesser included offense of the felony.

Section 1541.1 also creates the misdemeanor crime of attempted false pretense. As noted in the Committee Comments for the felony crime of attempted false pretense, the State is prohibited from prosecuting under the general attempt statutes because a specific attempt statute for false pretense exists.

OUII-CR 5-43  
(2014 Supp.)

No person may be convicted of the felony of false pretense unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, obtaining title;

Second, to **money/property**;

Third, of another;

Fourth, by means of a false **token/writing/representation**;

Fifth, known by the defendant to be false;

Sixth, with intent to defraud.

OUII-CR 5-44

No person may be convicted of the felony of false pretense unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, obtaining;

Second, a signature of another;

Third, to any written instrument;

Fourth, by means of a false **token/writing/representation**;

Fifth, known by the defendant to be false;

Sixth, with intent to cheat or defraud.

OUII-CR 5-45

No person may be convicted of the felony of false pretense for alleged charitable purposes unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, obtaining;

Second, to **money/property**;

Third, of another;

Fourth, by means of a false **token/writing/representation**;

Fifth, known by the defendant to be false;

Sixth, for an alleged charitable purpose;

Seventh, with intent to defraud.

OUJI-CR 5-46

No person may be convicted of the felony of false pretense for alleged charitable purposes unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, obtaining;

Second, a signature to any written instrument;

Third, of another;

Fourth, by means of a false **token/writing/representation**;

Fifth, known by the defendant to be false;

Sixth, for an alleged charitable purpose;

Seventh, with intent to defraud.

OUJI-CR 5-47

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of the felony of false pretense by false negotiable paper unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, obtaining title;

Second, to **money/property**;

Third, of another;

Fourth, by means of a false negotiable paper of a nonexistent banking **company/corporation**;

Fifth, known by the defendant to be false;

Sixth, with intent to defraud.

OUII-CR 5-48

No person may be convicted of the felony of false pretense by false negotiable paper unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, obtaining;

Second, a signature to any written instrument;

Third, of another;

Fourth, by means of a false negotiable paper of a nonexistent banking **company/corporation**;

Fifth, known by the defendant to be false;

Sixth, with intent to defraud.

OUII-CR 5-49



No person may be convicted of false personation unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the defendant falsely assumed the identity of another person;

Second, the impersonation of that identity was intentional;

[Third, under that false identity the defendant **subscribed/verified/ published/acknowledged/proved** a written instrument;

Fourth, with the intent that the instrument be **delivered/used** as true].

[Third, under that false identity the defendant did any act that might have made the other person liable to **(any lawsuit or prosecution)/(pay any money)/ (incur any charge/forfeiture/penalty)**;

Fourth, if the act had been done by the other person].

[Third, under that false identity the defendant **obtained/received** any benefit;

Fourth, as a result of impersonating the other person].

[Third, under that false identity the defendant received any **money/property**;

Fourth, knowing that it was intended to be delivered to the other person;

Fifth, with the intent to convert the money/property to (the defendant's own use)/(the use of another person who was not entitled to it); and

Sixth, the value of the **money/property** was **(less than \$1,000)/(\$1,000-\$2,499.99)/(\$2,500-\$14,999.99)/(\$15,000 or more)**.

**[A written instrument is every instrument (partly printed and partly written)/(wholly printed with a written signature thereto), and every signature of a/an individual/firm/ corporation/(officer of a firm/corporation) and every writing purporting to be such signature].**

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Statutory Authority: 21 O.S. 2011 & Supp. 2019, §§ 1531, 1532, 1625.

The bracketed definition of "written instrument" is taken from 21 O.S. 2011, § 1625.

OUJI-CR 5-50  
(2019 Supp.)

No person may be convicted of the felony of assault while masked unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **(entered upon the premises of another)/(demanded entry into the house/enclosure of another);**

Second, with the intent to inflict **(bodily injury)/(injury to property);**

Third, while **masked/(in disguise).**

First, assaulted another;

Second, with a dangerous **weapon/(instrument of punishment);**

Third, while **masked/(in disguise).**

**[You may, but are not required to, regard proof that the defendant (entered upon the premises of another)/(demanded entry into the house/enclosure of another) as sufficient evidence of the defendant's intent to inflict (bodily injury)/(injury to property). The existence of this intent must be proved beyond a reasonable doubt].**

OUJI-CR 5-51

No person may be convicted of making a false claim for insurance unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **presented/(caused to be presented);**

Second, **[proof in support of] a false/fraudulent claim;**

Third, for payment of a loss;

Fourth, upon a contract for insurance.

First, **prepared/made/subscribed;**

Second, **a/an account/certificate/(survey affidavit)/(proof of loss)/book/paper/ writing;**

Second, with the intent to **(present/use it)/(allow it to be presented/used);**

Second, in support of a **false/fraudulent claim;**

Third, for payment of a loss;

Fourth, upon a contract for insurance.

OUII-CR 5-52

No person may be convicted of the **felony/misdemeanor** of home repair fraud unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **knowingly/(with reason to know)**;

Second, entered into a consumer transaction for home repair; and

Third, **knowingly/(with reason to know)**;

Fourth, [misrepresented a material fact relating to the **(terms of the consumer transaction)/(the preexisting/existing condition of any portion of the property involved)**]; **OR**

[**created/confirmed** an impression of the consumer which was false and which the defendant did not believe to be true]; **OR**

[promised performance which the defendant **(did not intend to perform)/(knew would not be performed)**]; **OR**

[**used/employed** any **deception/(false pretense/promises)** in order to **induce/encourage/solicit** a consumer to enter into a consumer transaction]; **OR**

[required payment for the home repair at a price which unreasonably exceeded the value of the services and materials needed for the home repair];

[Fifth, **(when the value received for the performance of the consumer transaction exceeded \$500.00)/(the defendant had a prior conviction for home repair fraud)**].

First, **knowingly/(with reason to know)**;

Second, damaged the property of another;

Third, with the intent to enter into a consumer transaction for home repair;

[Fourth, **(when the value received for the performance of the consumer transaction exceeded \$500.00)/(the defendant had a prior conviction for home repair fraud)**].

First, **knowingly/(with reason to know)**;

Second, **misrepresented himself/herself/(another person)** to be an **employee/agent of (the federal/State/county/municipal government)/(a public utility)**;

Third, with the intent to cause a person to enter into a consumer transaction for home repair with **himself/herself/(another person)**;

[Fourth, **(when the value received for the performance of the consumer transaction exceeded \$500.00)/(the defendant had a prior conviction for home repair fraud)**].

No person may be convicted of **credit/debit** card theft unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, taking a **credit/debit** card;

Second, from the **possession/custody/control** of another;

Third, without the cardholder's consent.

First, receiving a **credit/debit** card;

Second, with the intent to **(use/sell it)/(transfer it to a person other than the issuer or the cardholder)**;

Third, knowing that the **credit/debit** card was taken;

Fourth, from **[the possession/custody/control of]** another;

Fifth, without the cardholder's consent.

First, **receiving/holding/concealing** a **credit/debit** card;

Second, which had been **lost/mislaid**;

Third, under circumstances which gave **him/her knowledge/cause** to inquire as to the true owner;

Fourth, and appropriating the **credit/debit** card to **his/her use/(the use of another not entitled to it)**.

**[You may, but are not required to, regard proof that the defendant had (in his/her possession)/(under his/her control) another's credit/debit card as sufficient evidence of credit/debit card theft. The defendant's guilt of credit/debit card theft must be proved beyond a reasonable doubt.]**

OUJI-CR 5-54

INSTRUCTION No. \_\_\_\_\_

First, possession of a **credit/debit** card;

Second, by a person other than the cardholder or a person authorized by the cardholder.

OUII-CR 5-55

Confidence Game - Operation by means of which advantage is taken of the confidence placed by one person in another through false representation, deception, or device.

Reference: Rucker v. State, 88 Okl. Cr. 15, 19, 195 P.2d 299, 304 (1948). See also Lane v. State, 742 P.2d 577, 580 (Okl. Cr. 1987) (setting out material elements of crime of "Confidence Game").

False Token - Matured check or other order used, with knowledge that the drawer is not authorized to draw the sum stated, as a means for obtaining any signature, money, or property.

Reference: 21 O.S. 1991, § 1545.

Intent to Defraud - Scheme to take property so as permanently to deprive the owner.

References: Dunaway v. State, 561 P.2d 103 (Okl. Cr. 1977); Armstrong v. State, 74 Okl. Cr. 42, 122 P.2d 823 (1942).

Obtaining Title - Inducing the owner to part with **his/her** rights in property permanently.

Reference: Warren v. State, 93 Okl. Cr. 166, 173, 226 P.2d 320, 325 (1951).

Property - Property includes:

(a) Real Property - Every estate, interest and right in lands, including structures or objects permanently attached to the land;

(b) Personal Property - Money, goods, chattels, effects, evidence of rights in action, and written instruments effecting a monetary obligation or right or title to property.

References: 21 O.S. 1991, §§ 102, 103, 104.

Spurious Coin - Any token, disk, blank, slug, washer, or sweated, mutilated, false, or counterfeited coin or other device, used in substitution for lawful coin of the United States.

Reference: 21 O.S. 1991, § 1848.

Valuable Thing - Includes not only physical objects but also intangible substances and services.

Reference: Stokes v. State, 366 P.2d 425 (Okl. Cr. 1961).

OUII-CR 5-56

INSTRUCTION No. \_\_\_\_\_

The defendant is charged with forgery in the **first/second** degree of **[Alleged Document, Record, etc., Forged, Uttered, Possessed]** on **[Date]** in **[Name of County]** County, Oklahoma.

OUJI-CR 5-57



INSTRUCTION No. \_\_\_\_\_

No person may be convicted of forgery in the first degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **making/signing/(altering to make);**

Second, a false **will/(will codicil)/deed/(instrument affecting an interest in real property)/(acknowledgement of an instrument that may be recorded or given in evidence)/(certificate of proof of a deed/will/[will codicil]/ [instrument that may be recorded/given in evidence]);**

Third, with the intent to defraud.

OUII-CR 5-58

No person may be convicted of forgery in the first degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **making/signing/(altering to make);**

Second, a false **(public security for the payment of money)/(public security for the receipt of money/property)/(public stock certificate/option/ right)/(instrument evidencing public debt/liability)/(transfer instrument of a public security/stock/[stock option/right])/(transfer instrument of an instrument evidencing public debt/liability);**

Third, with the intent to defraud.

OUJI-CR 5-59

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, making;

Second, a false **(Great Seal of Oklahoma)/(seal of a public office)/(seal of a Court of record)/(seal of an Oklahoma corporation)/(seal of another State/government/country)/(public seal recognized by the laws of Oklahoma)/(impression of any seal recognized by the laws of Oklahoma)**;

Third, with the intent to defraud.

OUII-CR 5-60

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, ~~making~~/(altering/marking to make);

Second, a false (judicial process)/(pleading/bond/instrument filed in any court)/(license recognized by the laws of Oklahoma)/(writing having legal significance);

Third, with the intent to defraud.

OUII-CR 5-61

No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **making/(altering to make)**;

Second, a false ticket for transportation by a common carrier;

Third, with the intent to defraud.

OUII-CR 5-62

No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, **signing/(procuring to be signed)**;

Third, by an **officer/agent** of **a/an corporation/association**;

Fourth, of a false **(document of ownership)/(stock certificate/(transfer document))** of the **corporation/association**;

Fifth, with the intent to **issue/sell/pledge/(cause to be issued/sold/pledged)**.

OUII-CR 5-63

No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, **signing/(procuring to be signed)**;

Third, by an **officer/agent** of **a/an corporation/association**;

Fourth, of a false **bond/(evidence of debt)** of the **corporation/association**;

Fifth, with the intent to **issue/sell/pledge/(cause to be issued/sold/pledged)**.

OUII-CR 5-64

No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, making;

Second, a false coin of **(the United States)**/[Give Name of Foreign Country];

Third, with intent to **sell/utter/use/circulate** as genuine;

Fourth, within Oklahoma.

OUJI-CR 5-65



INSTRUCTION No. \_\_\_\_\_

No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, making;

Second, a false coin of **(the United States)/[Give Name of Foreign Country]**;

Third, with intent to export to injure or to defraud.

OUII-CR 5-66

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, knowingly;

Second, **making/(altering to make)**;

Third, a false **postage/revenue** stamp of the United States.

OUII-CR 5-67

No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **making/engraving/(causing to be made/engraved)**;

Second, without authority;

Third, a plate of a **(promissory note)/(bill of exchange)/draft/check/(certificate of deposit)/(evidence of debt)**;

Fourth, issued by a bank;

Fifth, with the intent to **use/(permit it to be used)** for the purpose of taking therefrom any impression to be **passed/sold/altered**.

OUJI-CR 5-68

No person may be convicted of forgery unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, intentionally;

Second, **selling/exchanging/delivering/(receiving upon a sale/exchange/ delivery)/(offering for sale/exchange/delivery)**;

Third, for any consideration;

Fourth, a false **(promissory note)/check/bill/ draft/(instrument evidencing a debt)/(instrument promising payment of money)**;

Fifth, with a value of **(less than \$1,000)/(\$1,000-\$2,499.99)/(\$2,500-\$14,999.99)/(\$15,000 or more)**;

Sixth, known by the defendant to be false.

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Statutory Authority: 21 O.S. Supp. 2019, § 1577.

OUJI-CR 5-69  
(2019 Supp.)

No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **selling/exchanging/delivering/(keeping for sale/exchange/delivery)/ (offering for sale/exchange/delivery)/(receiving upon a purchase/ exchange/delivery);**

Second, a false ticket for transportation by common carrier;

Third, known by the defendant to be false;

Fourth, with the intent to defraud.

OUJI-CR 5-70

No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **selling/(offering to keep for sale)**;

Second, a false **postage/revenue** stamp of the United States;

Third, known by the defendant to be false.

OUII-CR 5-71

No person may be convicted of forgery unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **offering/publishing** as genuine;

Second, a false (**writing having legal significance**)/coin;

Fourth, known by the defendant to be false;

Fifth, with the intent to defraud.

[A series of offenses may be aggregated into one offense when they are the result of the formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, results in the taking or diversion of money or property on a recurring basis. When all acts result from a continuing course of conduct, they may be aggregated into one crime. Acts forming an integral part of the first taking which facilitate subsequent takings, or acts taken in preparation of several takings which facilitate subsequent takings, are relevant to determine the intent of the party to commit a continuing crime.]

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Statutory Authority: 21 O.S. Supp. 2019, § 1592.

OUII-CR 5-72  
(2019 Supp.)

No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, **issuing/selling/pledging/(causing to be issued/sold/pledged)**;

Third, by an **officer/agent** of **a/an corporation/association**;

Fourth, of a false **(document of ownership)/(stock certificate)/(stock transfer document)** of the **corporation/association**.

OUII-CR 5-73



No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, **reissuing/selling/pledging**;

Third, by an **officer/agent** of **a/an corporation/association**;

Fourth, of a surrendered or canceled **(document of ownership)/(stock certificate)/(stock transfer document)** of the **corporation/association**;

Fifth, with the intent to defraud.

OUII-CR 5-74

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, **issuing/selling/pledging/(causing to be issued/sold/pledged)**;

Third, by an **officer/agent** of **a/an corporation/association**;

Fourth, of a false **bond/(evidence of debt)** of the **corporation/association**.

OUII-CR 5-75

No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, possesses;

Second, without authority;

Third, a plate of a (**promissory note**)/(**bill of exchange**)/**draft/check**/(**certificate of deposit**)/(**evidence of a debt**);

Fourth, issued by a bank;

Fifth, with the intent to make an impression of the plate for **sale/exchange/alteration**.

OUII-CR 5-76

No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, possesses;

Second, without authority;

Third, an impression made from a plate of a **(promissory note)/(bill of exchange)/draft/check/(certificate of deposit)/(evidence of a debt)**;

Fourth, issued by a bank;

Fifth, with the intent to **sell/exchange/alter** the impression.

OUII-CR 5-77

No person may be convicted of forgery-unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, possesses;

Second, a false (**negotiable note**)/**bill/draft**/(**evidence of debt**);

Third, with a value of (**less than \$1,000**)/(**\$1,000-\$2,499.99**)/(**\$2,500-\$14,999.99**)/(**\$15,000 or more**);

Fourth, of a **corporation/company**;

Fifth, known by the defendant to be false;

Sixth, with the intent to defraud; and

Seventh, with the intent to (**utter as true or as false**)/(**cause to be uttered as true or as false**).

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Statutory Authority: 21 O.S. Supp. 2019, § 1578.

OUII-CR 5-78  
(2019 Supp.)

No person may be convicted of forgery unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, possesses/(causes another person to possess);

Second, a false writing having legal significance;

Third, with a value of **(less than \$1,000)/(\$1,000-\$2,499.99)/(\$2,500-\$14,999.99)/(\$15,000 or more)**;

Fourth, known by the defendant to be false;

Fifth, with the intent to injure or defraud.

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Statutory Authority: 21 O.S. Supp. 2019, § 1579.

OUJI-CR 5-79  
(2019 Supp.)

No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, possesses;

Second, a false coin of **(the United States)/[Give Name of Foreign Country]**;

Third, known by the defendant to be false;

Fourth, with the intent to **sell/use/circulate/export/(cause to be offered/passed)**.

OUII-CR 5-80

No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **destroying/falsifying;**

Second, a **(recorded will)/(recorded will codicil)/conveyance/(recorded instrument which is by law evidence)/(judgment of a court of record)/ (return of process);**

Third, with the intent to defraud.

OUJI-CR 5-81



No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **making/(altering to make);**

Second, a false entry in a **(book of records)/(recorded will)/(recorded will codicil)/conveyance/(recorded instrument which is by law evidence)/ (judgment of a court of record)/(return of process);**

Third, with the intent to defraud.

OUJI-CR 5-82

No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **making/(altering to make)**;

Second, by an abstracter;

Third, of a false entry in an abstract;

Fourth, with intent to defraud.

OUJI-CR 5-83

INSTRUCTION No. \_\_\_\_\_

First, **making/(altering to make)**;

Second, a false entry in a book of accounts of the **(State auditor/treasurer)/(County treasurer)**;

Third, with the intent to defraud.

OUJI-CR 5-84

No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **making/(altering to make)**;

Second, a false entry in a book of accounts of a corporation;

Third, with the intent to defraud.

OUII-CR 5-85

First, **altering/obliterating/falsifying/destroying /erasing;**

Second, by **a/an officer/member/employee** of a **corporation/partnership/ association;**

Third, of any **account/(book of accounts)/records** of the **corporation/ partnership/association;**

Fourth, with the intent to **defraud/(conceal embezzlement/misconduct).**

OUII-CR 5-86

No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, making;

Second, by **a/an officer/member/employee of a/an corporation/partnership/ association;**

Third, of a false entry in any **account/(book of accounts)/records of the corporation/partnership/association;**

Fourth, with the intent to **defraud/(conceal embezzlement/misconduct).**

OUJI-CR 5-87

No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, keeping;

Second, by **a/an officer/member/employee of a/an corporation/partnership/ association;**

Third, any false account of the **corporation/partnership/association;**

Fourth, with the intent to **defraud/(conceal embezzlement/misconduct).**

OUJI-CR 5-88

No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, certification;

Second, by an authorized officer;

Third, of a false **acknowledgment/attestation**;

Fourth, known by the officer to be false.

OUJI-CR 5-89



No person may be convicted of forgery in the second degree unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, obtaining;

Second, the signature of another;

Third, to a writing having legal significance;

Fourth, by a false representation concerning the kind of writing signed.

OUJI-CR 5-90

The value of multiple **acts/occurrences/transactions** may be added together into one total value. In determining value, you may consider only **acts/occurrences/transactions** resulting from a continuing course of conduct in a common plan or scheme, or the setting up of a mechanism which, when put into operation, results in the taking or diversion of money or property on a recurring basis. You may consider **acts/occurrences/transactions** forming an integral part of the first taking which facilitate subsequent takings, or **acts/occurrences/ transactions** taken in preparation of several takings which facilitate subsequent takings, to determine the intent of the party to commit a continuing crime.

OUII-CR 5-90A  
(2019 Supp.)

"Altering" to Make - Materially changing a document, check or instrument.

References: Willingham v. State, 549 P.2d 350 (Okl. Cr. 1976); State v. Liberty Nat'l Bank & Trust Co., 414 P.2d 281 (Okl. 1966); Boyer v. State, 68 Okl. Cr. 220, 97 P.2d 779 (1939); Moss v. Arnold, 63 Okl. Cr. 343, 75 P.2d 491 (1938).

Intent to Defraud - Scheme for obtaining property without authorization.

Reference: State v. McCray, 15 Okl. Cr. 313, 176 P. 418 (1919).

Property - Property includes:

(a) Real Property - Every estate, interest, and right in lands, including structures or objects permanently attached to the land;

(b) Personal Property - Money, goods, chattels, effects, evidences of rights in action, and written instruments effecting a monetary obligation or right or title to property.

References: 21 O.S. 1991 §§ 102, 103, 104.

Public Security - Negotiable or transferable instrument issued or purporting to have been issued under the authority of this State, by virtue of any law thereof, which promises the payment of money.

Reference: 21 O.S. 1991, § 1562.

Utter - To offer a forged instrument with the representation, by words or action, that the same is genuine.

Reference: Fields v. State, 515 P.2d 1402, 1403 (Okl. Cr. 1973). See also Johnson v. State, 564 P.2d 664, 666 (Okl. Cr. 1977) (knowledge of falsity of forged instrument must be shown).

OUJI-CR 5-91

The defendant is charged with:

**[grand/petit larceny]**

**[grand larceny in (a dwelling/vessel)/(the nighttime)]**

**[larceny of domestic animals/fowls]**

**[larceny of an automotive driven vehicle]**

**[larceny from a house]**

**[grand/petit larceny of (oil products)/merchandise]**

**[entering with the intent to steal copper]**

of **[Description of Property Allegedly Stolen]** in the possession of **[Name of Possessor]** on **[Date]** in **[Name of County]** County, Oklahoma.

OUJI-CR 5-92

No person may be convicted of grand larceny unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, taking;

Second, carrying away;

Third, of (personal property)/(one or more firearms);

Fourth, of another;

Fifth, (valued at (\$1,000-\$2,499.99)/(\$2,500-\$14,999.99)/(\$15,000 or more)/(from the person of another);

Sixth, by **fraud/stealth**;

Seventh, with the intent to deprive permanently.

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Statutory Authority: 21 O.S. Supp. 2019, §§ 1701, 1704, 1705.

When discussing the element "of another," the cases usually speak of the other as the owner of the property. Ownership of the personal property by the other person is not required, however, and larceny has been committed if another's possession has been disturbed. Hence, the owner of personal property can be convicted of larceny of his property if the owner were to take the property from the lawful possession of another with intent to deprive the possessor of his property right permanently. *Borrelli v. State*, 1969 OK CR 135, ¶ 6, 453 P.2d 312, 314 (possession of car by owner's wife was sufficient ownership to justify charge of larceny of automobile). Grand larceny is thus a crime against lawful possession. *Pershica v. State*, 1974 OK CR 154, ¶ 17, 525 P.2d 1374, 1377.

The fifth element lists the two alternatives which distinguish grand larceny from petit larceny in accordance with section 1704.

The word "stealth," one of the two alternative means by which the personal property must be obtained for larceny, will encompass the situation illustrated by section 1702 concerning lost property. As previously mentioned in the commentary to the introductory instruction, section 1702 does not create a separate crime but simply illustrates one factual situation which can, in certain instances, constitute larceny. Taking the property by fraud or stealth simply indicates that the taking is trespassory.

The mens rea as stated in section 1701 is "intent to deprive." Case law indicates that it is more appropriate to describe the mens rea as "intent to deprive permanently." *Tate v. State*, 1985 OK CR 116, ¶ 9, 706 P.2d 169, 171; *Barnes v. State*, 1963 OK CR 102, 10, 387 P.2d 146, 148. The seventh element reflects the case law on the mens rea element of larceny. See *Phipps v. State*, 1977 OK CR 337, ¶ 10, 572 P.2d 588, 591; *Simmons v. State*, 1976 OK CR 89, ¶ 15, 549 P.2d 111, 116.

OUJI-CR 5-93  
(2019 Supp.)

No person may be convicted of petit larceny unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, taking;

Second, carrying away;

Third, personal property;

Fourth, of another;

Fifth, of value;

Sixth, by **fraud/stealth**;

Seventh, with the intent to deprive permanently.

OUJI-CR 5-94  
(2003 Supp.)

No person may be convicted of grand larceny of a dwelling/vessel unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, taking;

Second, carrying away;

Third, personal property;

Fourth, of another;

Fifth, (**valued at more than \$50/500**)/(from the person);

Sixth, committed in a **dwelling/vessel**;

Seventh, by **fraud/stealth**;

Eighth, with the intent to deprive permanently.

OUII-CR 5-95

No person may be convicted of grand larceny in the nighttime unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, taking;

Second, carrying away;

Third, personal property;

Fourth, of another;

Fifth, from the person;

Sixth, in the nighttime;

Seventh, by **fraud/stealth**;

Eighth, with the intent to deprive permanently.

OUII-CR 5-96



No person may be convicted of larceny from the house unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, unlawful;

Second, entry;

Third, taking;

Fourth, carrying away;

Fifth, personal property;

Sixth, of another;

Seventh, from a **house/(railroad car)/tent/booth/(temporary building)**;

Eighth, by **fraud/stealth**;

Ninth, with the intent to deprive permanently.

OUII-CR 5-97

No person may be convicted of larceny of **(domestic animals)/(an implement of husbandry)** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, taking;

Second, carrying away;

Third, **(domestic animals)/(an implement of husbandry)**;

Fourth, of another;

Fifth, with the intent to steal.

OUJI-CR 5-98

No person may be convicted of larceny of **domestic fowls** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, taking;

Second, carrying away;

Third, **domestic fowls**;

Fourth, of another;

Fifth, with the intent to steal.

OUJI-CR 5-99

No person may be convicted of larceny of an automotive driven vehicle unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, taking;

Second, carrying away;

Third, an **automobile/aircraft/(automotive driven vehicle)/ (construction/farm equipment)**);

Fourth, of another;

Fifth, with a value of \$50,000 or more;

Sixth, with the intent to steal.

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Statutory Authority: 21 O.S. 2011 & Supp. 2019, §§ 1720, 1730.

OUII-CR 5-100  
(2019 Supp.)

No person may be convicted of grand larceny of oil products unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, taking;

Second, carrying away;

Third, oil products;

Fourth, of another;

Fifth, valued at **\$500/\$1,000** ;

Sixth, from a **pipe/pipeline/tank/(tank car)/receptacle/container**;

Seventh, by **fraud/stealth**;

Eighth, with the intent to deprive permanently.

OUJI-CR 5-101  
(2003 Supp.)

No person may be convicted of petit larceny of oil products unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, taking;

Second, carrying away;

Third, oil products;

Fourth, of another;

Fifth, valued at less than \$500;

Sixth, from a **pipe/pipeline/tank/(tank car)/receptacle/container**;

Seventh, by **fraud/stealth**;

Eighth, with the intent to deprive permanently.

OUII-CR 5-102  
(2003 Supp.)

No person may be convicted of larceny of merchandise unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, taking;

Second, carrying away;

Third, merchandise;

Fourth, from a **retailer/wholesaler**;

Fifth, with a value of **(less than \$1,000)/(\$1,000-\$2,499.99)/(\$2,500-\$14,999.99)/(\$15,000 or more)**;

Sixth, by **fraud/stealth**;

Seventh, with the intent to deprive permanently.

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Statutory Authority: 21 O.S. Supp. 2019, § 1731.

OUII-CR 5-103  
(2019 Supp.)

INSTRUCTION No. \_\_\_\_\_

OUJI-CR 5-104  
(2019 Supp.)



No person may be convicted of entering with the intent to steal copper **wire/tubing/cable** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, entering;

Second, a/an **premises/easement/(right of way)**;

Third, with the intent to **steal/(remove without the consent of the owner)**;

Fourth, copper **wire/tubing/cable**;

Fifth, of another;

Sixth, from an appurtenance on the **premises/easement/(right of way)**.

OUII-CR 5-105

No person may be convicted of **[grand]** larceny of lost property unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, finding lost property;

Second, valued at **(less than \$1,000)/(\$1,000-\$2,499.99)/(\$2,500-\$14,999.99)/(\$15,000 or more)**;

Third, under circumstances that the person knew or was able to determine who was the true owner;

Fourth, and taking the property for the **(person's own use)/(use of another person who was not entitled to the property)**;

Fifth, without first making such an effort to find the owner and return the property to the owner as would be reasonable and just under the circumstances.

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Statutory Authority: 21 O.S. Supp. 2019, §§ 1702.

OUII-CR 5-105A  
(2019 Supp.)

Appurtenance - Any structure or improvement permanently attached to the land.

References: Anthony v. Barton, 196 Okla. 260, 264, 164 P.2d 642, 645 (1945); 60 O.S. 1991, § 8; Black's Law Dictionary 94 (5th ed. 1979).

Carrying Away - Removing an article for the slightest distance. Carrying away is more than a mere change of position; it is a movement for purposes of permanent relocation.

References: Cunningham v. District Ct. of Tulsa Co., 432 P.2d 992 (Okla. Cr. 1967); Hutchison v. State, 427 P.2d 114 (Okla. Cr. 1967); Brinkley v. State, 60 Okla. Cr. 106, 61 P.2d 1025 (1936).

Domestic Animals - Horses, jackasses, jennets, mules, cattle, hogs, dogs, sheep or goats.

Reference: 21 O.S. 1991, § 1716.

Dwelling - Note: If necessary to give a definition, see OUJI-CR 5-18, Burglary.

Easement - The limited right to use the land of one person for the benefit of another.

References: Story v. Hefner, 540 P.2d 562 (Okla. 1975); Frater Okla. Realty Corp. v. Allen Laughon Hdwe. Co., 206 Okla. 666, 245 P.2d 1144 (1952); 60 O.S. 1991, § 49.

Fraud - False representation intended to cause a surrender of personal property from the person in rightful possession.

Reference: Black's Law Dictionary 594 (5th ed. 1979).

Intent to Deprive Permanently - Purpose forever to deny the person in rightful possession of the use or value or property.

References: Simmons v. State, 549 P.2d 111 (Okla. Cr. 1976); Home, Fire & Marine Ins. Co. v. McCollum & Co., 201 Okla. 595, 207 P.2d 1094 (1949); R. Perkins, Criminal Law 266 (2d ed. 1969).

Intent to Steal - Purpose forever to deny the person in rightful possession of the use or value of property.

References: Darnell v. State, 369 P.2d 470 (Okla. Cr. 1962); 21 O.S. 1991, § 1730, referring to 21 O.S. 1991, § 1701; R. Perkins, Criminal Law 265 (2d ed. 1969).

Merchandise - Goods offered for sale by one who deals in goods of that kind.

Reference: 12A O.S. 1991, § 2-104(1).

Nighttime - Period between sunset and sunrise.

Reference: 21 O.S. 1991, § 1440.

Of Another - One who has lawful possession as against the rights of a taker, without regard to ownership.

Reference: Davidson v. State, 330 P.2d 607 (Okla. Cr. 1958).

Personal Property - Money, goods, chattels, effects, evidences of rights in action, and written instruments effecting a monetary obligation or right of title to property.

Reference: 21 O.S. 1991, § 103.

Right of Way - The limited right to travel across the land of another.

References: 60 O.S. 1991, § 50; Black's Law Dictionary 1191 (5th ed. 1979).

Stealth - Without right; secretly and without leave or consent of the owner.

Reference: Roach v. State, 23 Okl. Cr. 280, 214 P. 563 (1923).

Taking - The exercise of complete possession or control.

References: Cunningham v. District Ct. of Tulsa Co., 432 P.2d 992 (Okl. Cr. 1967); Hutchinson v. State, 427 P.2d 112 (Okl. Cr. 1967); Brinkley v. State, 60 Okl. Cr. 106, 61 P.2d 1023 (1936).

Value - Fair market value or reasonable selling price of property.

References: Gilbreath v. State, 555 P.2d 69 (Okl. 1976); Morris v. State, 491 P.2d 784 (Okl. Cr. 1971); Carson v. State, 30 Okl. Cr. 438, 236 P. 627 (1925).

Vessel - A ship of any kind, and any structure adapted to be navigated from place to place.

Reference: 21 O.S. 1991, § 98.

OUII-CR 5-106  
(2003 Supp.)

INSTRUCTION No. \_\_\_\_\_

The defendant is charged with malicious mischief by **[Alleged Injury or Damage]** of **[Description of Property]** owned by **[Name of Owner]** on **[Date]** in **[Name of County]** County, Oklahoma.

OUJI-CR 5-107

No person may be convicted of malicious mischief unless the State has proved beyond a reasonable doubt each element of the crime. These element are:

First, maliciously;

Second, injuring, defacing or destroying;

Third, property;

Fourth, of another.

OUJI-CR 5-108

Maliciously - With a wish to injure property.

Reference: McDaris v. State, 505 P.2d 502 (Okl. Cr. 1973).

Property - Property includes:

- (a) Real Property - Every estate, interest and right in lands, including structures or objects permanently attached to the land;
- (b) Personal Property - Money, goods, chattels, effects, evidences of rights in action, and written instruments effecting a monetary obligation or right or title to property.

References: 21 O.S. 1991, §§ 102, 103, 104.

OUII-CR 5-109

INSTRUCTION No. \_\_\_\_\_

The defendant is charged with **receiving/concealing** stolen property of **[Description of Alleged Stolen Property]** **received/concealed** from **[Person From Whom Allegedly Received or Concealed]** on **[Date]** in **[Name of County]** County, Oklahoma.

OUJI-CR 5-110



No person may be convicted of receiving stolen property unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **(receiving in exchange for anything of value)/buying;**

Second, **stolen/embezzled/(fraudulently/feloniously obtained) personal property;**

Third, with a value of **(less than \$1,000)/(\$1,000-\$2,499.99)/(\$2,500-\$14,999.99)/(\$15,000 or more);**

Fourth, **(known/believed by the defendant)/(that the defendant reasonably should have known/believed) to have been stolen/embezzled/ (fraudulently/feloniously obtained);**

Fifth, with the intent to **(deprive permanently)/(aid the thief)/ (obtain some gain/reward for restoring the property to the owner)/(derive a benefit/profit).**

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Statutory Authority: 21 O.S. Supp. 2019, § 1713.

Receipt of property means that the receiver has gained possession of the property. A transfer of possession of stolen property must occur. *McGee v. State*, 1937 OK CR 29, 65 P.2d 207, 1937 OK CR 29; *Sipes v. State*, 1926 OK CR 412, 251 P. 511, 36 Okl. Cr. 1. Receipt can also be established by the exercise of dominion and control over the property by the defendant, regardless of whether the defendant has manual possession of the stolen property. *Price v. State*, 1913 OK CR 118, 131 P. 1102, 9 Okl. Cr. 359. *See Hunsucker v. State*, 1970 OK CR 140, ¶ 17, 475 P.2d 618, 621. Furthermore, **due to the statutory language "buys," if an agreed-upon bargain has been struck, the crime of receiving stolen property seemingly has been committed, even though no dominion and control or physical possession has been exercised by the purchaser. The agreement to buy substitutes for the transfer of possession.**

Section 1713 specifies "upon any consideration" as an element of the crime of receiving stolen property. The concept of consideration is contained in the conduct of buying, which is an alternative in the first element, and therefore this element does not need to be separately stated if evidence is presented that the defendant bought the stolen property. Where the stolen property is not bought, the trial court must specify the type of consideration that the defendant is alleged to have given for it. As the Oklahoma Court of Criminal Appeals noted in *Hunsucker v. State*, 1970 OK CR 140, ¶ 17, 475 P.2d 618, 621, "the consideration referred to in the statute may be of many different types." In *Hunsucker*, for example, the Court of Criminal Appeals affirmed a conviction where there was no evidence that the defendant had paid for the stolen property; instead, the consideration consisted of the defendant's promise to pay for it. *Id.* at ¶ 5, 475 P.2d at 619-20.

The receiving-stolen-property statute is meant to discourage commerce in stolen property and to provide a criminal sanction against "fences." Thus, for the crime to have been committed, the property must have been stolen. Moreover, property which has been stolen but has now lost its stolen taint does not qualify for the protection of the receiving-stolen-property statute. *Booth v. State*, 1964 OK CR 124, ¶ 6, 398 P.2d 863, 868. To discuss stolen property only, however, is not completely accurate because the statutory language indicates that property that has been embezzled, obtained by false pretense, or "otherwise feloniously obtained" is also covered by section 1713. The language "otherwise feloniously obtained" would seem to cover property obtained as a result of forgery, extortion, burglary, and other crimes. The language of the second element in the instruction reflects the broad language of the statute.

The language of section 1713 limits the coverage of the statute to personal property. The second element has been drafted accordingly. The definition of personal property under Oklahoma statutes and case law is broader,

however, than the definition of personal property under common law. *State v. McRay*, 1919 OK CR 7, 177 P. 127, 15 Okl. Cr. 374; 21 O.S. 2011, §§ 103, 1712. Value is an inherent attribute of personal property. If the prosecutor proves that what has been received or purchased is personal property, the prosecutor has also proven value. Hence, the statutory language "any value whatsoever" does not, in the opinion of the Commission, create a separate element of the crime.

The third element presents the mens rea element for the crime of receiving stolen property. Prior to the 1961 amendments to section 1713, the cases had clearly held that the defendant had either to know or to believe that the property was stolen. Acquisition of property without knowledge or belief as to the character of the property would preclude conviction for the crime. *Camp v. State*, 1939 OK CR 30, 89 P.2d 378, 66 Okl. Cr. 20; *Weaver v. State*, 1925 OK CR 258, 235 P. 635, 30 Okl. Cr. 309; *Pickering v. United States*, 1909 OK CR 48, 101 P. 123, 2 Okl. Cr. 197. Of course, the mens rea element could be proved by circumstantial evidence. *Walker v. State*, 1946 OK CR 61, 170 P.2d 261, 82 Okl. Cr. 352; *Lewis v. State*, 1945 OK CR 90, 162 P.2d 201, 81 Okl. Cr.; *Davis v. State*, 1920 OK CR 228, 193 P. 745, 18 Okl. Cr. 112.

In 1961, the Legislature amended section 1713 by adding the words "or having reasonable cause to believe" in subsection 1 and by adding subsection 2. **The court has held that the presumption of subsection 2 is unconstitutional insofar as knowledge of the stolen character of the property is presumed solely from possession of property that is stolen.** *Payne v. State*, 1967 OK CR 194, ¶ 25, 435 P.2d 424, 428. *Compare Humphrey v. State*, 1969 OK CR 90, ¶ 4, 452 P.2d 590, 592. *See also Barnes v. United States*, 412 U.S. 837 (1973).

The Court of Criminal Appeals determined the issue of whether the 1961 amendment enlarged the mens rea element of receiving stolen property to include a reasonable-person standard in *Richardson v. State*, 1976 OK CR 24, ¶ 13, 545 P.2d 1292, 1295, and held that actual knowledge by the defendant of the stolen nature of the property was not required; "reasonable cause to believe" would suffice. *See also Hutton v. State*, 1972 OK CR 66, ¶ 9, 494 P.2d 1246, 1247 (instruction reading "knew or had reasonable cause to believe" held appropriate); *Jackson v. State*, 1973 OK CR 79, ¶¶ 12-13, 508 P.2d 277, 279-280. The 1961 amendment was intended to cover the situation in which a person should have made inquiry concerning the origin and title to the property because a reasonable person would have made inquiry. Failure to act as a reasonable person would have acted subjects one to criminal liability.

The Commission has decided to use the language "reasonably should have known" or "reasonably should have believed," rather than "reasonable cause to believe" in order to prevent a possible misunderstanding on the part of the jurors. The language "reasonable cause to believe" implies that, if the defendant reasonably believes the property is stolen, the crime has been committed, whether or not the property in fact is stolen. The Commission has concluded that the Legislature did not intend to subject persons to criminal liability solely because they believe they are receiving stolen property, when in fact they are not. What the Legislature intended to do by the amendments, in the opinion of the Commission, was to make a person inquire, when a reasonable person would have inquired, as to the character of the property. Failure to act as a reasonable person would have acted would then subject one to criminal liability, if the property is, in fact, stolen.

The "intent to deprive permanently" alternative in the fifth element presents a second mens rea requirement for the crime of receiving stolen property. Although this second mens rea element is not specifically mentioned in the statute, the Committee believes it is needed to prevent a person from being subjected to criminal penalty when the person receives stolen property knowing it to be stolen but with the intent to return the property to its owner/possessor or to deliver it to the police. The language of the instruction was chosen because the intent to deprive permanently is a mens rea element common to several property crimes which must have been present in order for the property to have acquired a felonious taint, as reflected in the second element.

The other alternatives in the fifth element are taken from *Hanlon v. State*, 1968 OK CR 89, ¶ 16, 441 P.2d 486, 489; and *Pickering v. United States*, 1909 OK CR 48, 101 P.123, 2 Okl. Cr. 197 (Syllabus 3 by the

Court).

OUJI-CR 5-111  
(2019 Supp.)

INSTRUCTION No. \_\_\_\_\_

The possession of recently stolen property found in the possession of one alleged to have received it, knowing at the time or having reasonable cause to believe that it was stolen property, may be explained, but such possession is a circumstance, which, if unsatisfactorily explained to the jury, may be considered in determining the guilt or innocence of the person charged with concealing stolen property. the mere possession of property recently stolen is not alone sufficient to convict the possessor of knowingly concealing stolen property, but when such fact is supplemented with other facts inconsistent with the idea that the possession is honest, it then becomes a question of fact for the jury to pass upon as to the guilt of innocence of the defendant, of knowingly concealing stolen property.

OUII-CR 5-112

No person may be convicted of concealing stolen property unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **concealing/withholding**;

Second, **stolen/embezzled/(fraudulently/feloniously obtained)** personal property;

Third, from the **owner/(person having possessory rights)**;

Fourth, **(known/believed by the defendant)/(that the defendant reasonably should have known/believed)** to have been **stolen/embezzled/ (fraudulently/feloniously obtained)**;

Fifth, with the intent to deprive permanently.

OUII-CR 5-113

Concealing - Hiding or secreting to prevent discovery.

References: Brewer v. State, 554 P.2d 18 (Okl. Cr. 1976); Black's Law Dictionary at 261 (5th ed. 1979).

Embezzled - Obtained through embezzlement. Embezzlement is the fraudulent appropriation of property by a person to whom it has been entrusted.

Reference: 21 O.S. 1991, § 1451.

Feloniously Obtained - Obtained at the commission of a felony. Under the law [**Name Crime**] is a felony. Its elements are:

Fraudulently Obtained - Obtained through false pretense. False pretense is the obtaining of title to property of another by false representation, which is known by the maker to be false, with the intent to defraud.

References: Hutton v. State, 494 P.2d 1246 (Okl. Cr. 1972); 21 O.S. 1991, §§ 1541.1, 1542.

Personal Property - Money, goods, chattels, effects, evidences of rights in action, and written instruments effecting a monetary obligation or right or title to property.

Reference: 21 O.S. 1991, § 103.

Receiving - Gaining possession of property through an exercise of dominion and control over the property, without regard to whether there is manual possession.

References: Hunsucker v. State, 475 P.2d 618 (Okl. Cr. 1970); McGee v. State, 60 Okl. Cr. 436, 65 P.2d 207 (1937); Price v. State, 9 Okl. Cr. 359, 131 P. 1102 (1913).

Stolen - Obtained through larceny. Larceny is the taking and carrying away of personal property of another by fraud or stealth, and with the intent to deprive permanently.

Reference: 21 O.S. 1991, § 1701.

Withholding - Keeping property from its owner or rightful possessor.

References: Smith v. State, 1977 OK CR 315, 573 P.2d 713; Black's Law Dictionary 1437 (5th ed. 1979).

With Intent to Deprive Permanently - Purpose to deny property to its rightful owner or possessor forever.

Reference: Hanlon v. State, 1968 OK CR 89, 441 P.2d 486.

OUII-CR 5-114  
(2000 Supp.)

No person may be convicted of receiving unlawful proceeds unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **knowingly/intentionally**;

Second, **receiving/acquiring** proceeds;

Third, knowing that the proceeds were derived from [**Specify Nature of Unlawful Activity as Defined in 21 O.S. Supp. 2014, § 2001(F), e.g., racketeering**]; and

Fourth, **knowingly/intentionally**;

**[Fifth, concealing the proceeds]**.

**[Fifth, engaging in transactions involving the proceeds]**.

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Statutory Authority: 21 O.S. Supp. 2014, § 2001.

OUII-CR 5-114A  
(2014 Supp.)

The defendant is charged with:

**[unauthorized use of a vehicle]**

**[possession of a stolen vehicle]**

**[tampering with a vehicle]**

**[interfering with vehicle]**

**[joyriding]**

on **[Date]** in **[Name of County]** County, Oklahoma.

This introductory instruction is appropriate for use with the offenses found in 47 O.S. 1991, § 4-102 (unauthorized use of a vehicle), *id.*, § 4-103 (possession of a stolen vehicle), *id.*, § 4-104 (tampering with a vehicle), 21 O.S. 1991, § 1787 (interfering with vehicle and joyriding).

OUII-CR 5-115  
(2000 Supp.)



No person may be convicted of unauthorized use of a vehicle unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **taking/using/driving**;

Second, a vehicle;

Third, by the defendant;

Fourth, without the consent of the owner;

Fifth, with the intent to deprive the owner, temporarily or otherwise, of the vehicle or its possession.

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Statutory Authority: 47 O.S. Supp. 2019, § 4-102 (A).

Whether the defendant's conduct in the vehicle in question was sanctioned by its owner is a question of fact to be resolved by the jurors. *Frederick v. State*, 1975 OK CR 88, ¶ 8, 535 P.2d 708, 710.

Failure to instruct the finder of fact with respect to the lesser included offenses of molesting or tampering with a vehicle, or of joy riding, will not be considered error unless the record reflects evidence which would justify such an instruction. Where the State's evidence demonstrates a direct and uncontroverted taking, using, or driving of a motor vehicle by the defendant, it is not incumbent on the trial court to instruct regarding lesser included offenses. *Holt v. State*, 1973 OK CR 7, ¶ 5, 505 P.2d 500, 501; *Connell v. State*, 1972 OK CR 153, ¶ 8, 497 P.2d 1106, 1107; *Magness, supra*. But see *Atterberry v. State*, 1976 OK CR 257, ¶ 9, 555 P.2d 1301, 1303-1304 (error to refuse lesser-included instruction where State's proof raised inferences justifying conviction either for unauthorized use or for tampering with a vehicle).

OUII-CR 5-116  
(2019 Supp.)

No person may be convicted of unauthorized use of an implement of husbandry unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **taking/using/driving**;

Second, an implement of husbandry;

Third, by the defendant;

Fourth, without the consent of the owner;

Fifth, with the intent to deprive the owner, temporarily or otherwise, of the vehicle or its possession.

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Statutory Authority: 47 O.S. Supp. 2019, § 4-102 (B).

OUJI-CR 5-116A  
(2019 Supp.)

No person may be convicted of possession of a stolen vehicle unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, a person not entitled to possession of a vehicle;

Second, **received/possessed/concealed/(disposed of)** the vehicle;

[Third, knowing it was stolen.]

[Third, knowing it was converted under **[Specify Circumstances Constituting a Crime].**]

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Statutory Authority: 47 O.S. Supp. 2018, § 4-103 (A).

OUII-CR 5-117  
(2019 Supp.)

No person may be convicted of possession of a stolen implement of husbandry unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, a person not entitled to possession of an implement of husbandry;

Second, **received/possessed/concealed/(disposed of)** the implement of husbandry;

[Third, knowing it was stolen.]

[Third, knowing it was converted under **[Specify Circumstances Constituting a Crime].**]

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Statutory Authority: 47 O.S. Supp. 2019, § 4-103 (B).

OUII-CR 5-117A  
(2019 Supp.)

No person may be convicted of the misdemeanor of tampering with a vehicle unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, intentionally;

Second, **injured/(tampered with)/damaged;**

Third, any **part/portion of a/an vehicle/(implement of husbandry);**

Fourth, without having a right to do so.

First, with the intent to commit a crime;

Second, **[(climbed into/upon a/an vehicle/(implement of husbandry)]/ [attempted to manipulate any of the levers/(starting mechanism)/ brakes/mechanisms/devices of a/an vehicle/(implement of husbandry) while it was at rest and unattended]/[set in motion a/an vehicle/ (implement of husbandry) while it was at rest and unattended];**

Third, without having a right to do so.

OUII-CR 5-118

No person may be convicted of interfering with vehicle unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, ~~(loitered in/upon)~~/defaced/injured/~~(manipulated/m eddled with any machinery/appliances of)~~;

Second, a/an automobile/(motor vehicle);

Third, without the consent of the owner of the ~~automobile~~/(motor vehicle).

OUII-CR 5-119

No person may be convicted of joyriding unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **molested/drove/(attempted to drive)**;

Second, **a/an automobile/(motor vehicle)**;

Third, without the consent of the owner;

Fourth, for the purpose of joyriding or any other purpose.

OUJI-CR 5-120

Vehicle - Every device in, upon, or by which person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks. Unless a title or registration has been issued, vehicles moved solely by animal power, implements of husbandry, special mobilized machinery, or self-propelled wheel chairs or tricycles for invalids are also excluded.

Reference: 47 O.S. 1991, §§ 1-186, 4-101.

OUJI-CR 5-121



INSTRUCTION No. \_\_\_\_\_

No person may be convicted of destruction/removal/ covering/alteration/defacing vehicle identification numbers, unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the defendant intentionally;

Second, **destroyed/removed/covered/altered/defaced/ (caused to be destroyed/ removed/covered/altered/defaced)**;

Third, **(the engine)/(any distinguishing)** number of any vehicle in this State;

Fourth, without first giving notice of the **destruction/removal/covering/ alteration/defacing** of the number to the Oklahoma Tax Commission upon a form prescribed by the Oklahoma Tax Commission.

OUJI-CR 5-122

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of giving a wrong description of a vehicle in an application for registration, unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the defendant gave a wrong description of a vehicle;

Second, in an application for registration;

Third, for the purpose of **concealing/hiding** the identity of the vehicle.

OUII-CR 5-123

No person may be convicted of the felony/misdemeanor of possession of a vehicle with a removed/falsified identification number, unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the defendant **possessed/bought/received/sold/(dispos ed of)**;

Second, **[an engine for]** a vehicle;

Third, **knowing/(with knowledge)** that the identification number of the **vehicle/ engine**;

Fourth, had been **removed/falsified/defaced/covered/dest royed/alter ed/forged**;

[Fifth, **and with the intent to conceal/misrepresent the identity of the vehicle/ engine]**.

OUII-CR 5-124

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of making a false statement in an application for **[an assignment of]** a certificate of title, unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the defendant knowingly;

Second, made a false statement;

Third, of a material fact;

Fourth, in his/her application for **[an assignment of]** a certificate of title.

OUII-CR 5-125

No person may be convicted of transfer of a stolen vehicle, unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the defendant **received/transferred** possession of a motor vehicle **from/to** another person;

Second, with the intent to procure/pass title to the vehicle;

Third, which **he/she knew/(had reason to believe)** was stolen;

Fourth, and the defendant was not an officer of the law engaged at the time in the performance of his/her official duties.

OUJI-CR 5-126

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of the offering/sale of unregistered securities, unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the willful;

Second, **offering/sale**;

Third, of a security;

Fourth, that was not registered with the Oklahoma Securities Commission.

OUII-CR 5-127

It is not unlawful to **offer/sell** any security in this State if the **security/ transaction** is exempt from registration requirements. Evidence has been introduced of an exemption from registration as a defense to the charge that the defendant committed the crime of the **offering/sale** of unregistered securities.

**The following offerings/sales** of securities are exempted from registration:

**[Set Out the Exemption(s) Listed in 71 O.S. Supp. 1996, § 401(a) or (b) That Is/Are Claimed by the Defendant].**

If, after considering all the evidence in this case, you have a reasonable doubt as to whether the security allegedly **offered/sold** by the defendant was exempt from registration, then you must find the defendant not guilty.

OUJI-CR 5-128

INSTRUCTION No. \_\_\_\_\_

A person who sells securities has the burden of investigation whether the securities can legally be sold before attempting to sell them. It is no excuse if ~~he~~/~~she~~ failed to ascertain whether they could legally be sold before selling them.

OUJI-CR 5-129



No person may be convicted of violating the Oklahoma Computer Crimes Act, unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, without authorization;

Third, **gained/(attempted to gain)** access to;

Fourth, and **damaged/modified/altered/deleted/destroyed/copied/(made use of)/disclosed/(took possession of)**;

Fifth, **[a computer/(computer system/network)]/[computer property]**.

First, used;

Second, **[a computer/(computer system/network)]/[computer property]**;

Third, for the purpose of **devising/executing a scheme/artifice**;

Fourth, **(with the intent to defraud/deceive/extort)/(for the purpose of controlling/obtaining money/property/services/(any thing of value))** by means of a **false/fraudulent pretense/representation**.

First, willfully;

Second, exceeded the limits of authorization;

Third, and **damaged/modified/altered/deleted/destroyed/copied/(made use of)/disclosed/(took possession of)**;

Fourth, **[a computer/(computer system/network)]/[computer property]**.

First, willfully;

Second, without authorization;

Third, **gained/(attempted to gain)** access to;

Fourth, **[a computer/(computer system/network)]/[computer property]**.

First, willfully;

Second, without authorization;

Third, **used/(caused to be used)** computer services.

First, willfully;

Second, without authorization;

Third, **[disrupted/(caused the disruption of) computer services]/[denied/ (caused the denial of) access/(computer services)]** to an authorized user of a **computer/(computer system/network)]**.

First, willfully;

Second, without authorization;

Third, **provided/(assisted in providing)** a means of accessing a **computer/ (computer system/network)**;

Fourth, in [**Specify Elements of Violation of 21 O.S. § 1953**].

First, **(communicated with)/(stored/retrieved data in/from)**;

Second, a computer **system/network**;

Third, for the purpose of using the access;

Fourth, to [**Specify Elements of Violation of the Oklahoma Statutes**].

OUJI-CR 5-130

The defendant is charged with

**[manufacturing/distributing/dispensing the controlled dangerous substance of (Name of Substance)]**

**[possessing with intent to manufacture/distribute/dispense the controlled dangerous substance of (Name of Substance)]**

**[knowingly and intentionally possessing the controlled dangerous substance of (Name of Substance)]**

**[distributing under Sec. 2-401(E) the controlled dangerous substance of (Name of Substance)]**

**[possession of drug paraphernalia]**

**[cultivation of (Name of Substance)]**

**[maintaining a place where controlled dangerous substances are kept]**

**[trafficking in illegal drugs]**

on **[Date]** in **[Name of County]** County, Oklahoma.

OUII-CR 6-1

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of distributing a controlled dangerous substance unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **knowingly/intentionally**;

Second, **distributing/(transporting with the intent to distribute)/([soliciting the use]/[using the services] of a person less than 18 years of age to cultivate/distribute/manufacture/(attempt to manufacture)**;

Third, the controlled dangerous substance of **[Name of Substance]**.

OUJI-CR 6-2

No person may be convicted of **manufacturing/(attempting to manufacture)** a controlled dangerous substance unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **knowingly/intentionally**;

Second, **manufacturing/(attempting to manufacture)**;

Third, the controlled dangerous substance of [**Name of Substance**].

OUII-CR 6-3  
(2003 Supp.)

No person may be convicted of possessing precursor substance with the intent to manufacture a controlled dangerous substance unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **knowingly/intentionally**;

Second, possessing;

Third, the following precursor **substance/substances**: [ **Names of Precursor Substances listed in 63 O.S 2001, § 2-322 or 2-401(G)**].

Fourth, with the intent to use the precursor **substance/substances** to manufacture;

Fifth, the controlled dangerous substance of [**Name of Substance**].

[You may, but are not required to, regard proof that the defendant **knowingly/intentionally** possessed (anhydrous ammonia in an unauthorized container) as sufficient evidence that the defendant intended to use the anhydrous ammonia to manufacture [**Name of Controlled Dangerous Substance**]. The defendant's intent to use the anhydrous ammonia to manufacture [**Name of Controlled Dangerous Substance**] must be proved beyond a reasonable doubt.]

OUII-CR 6-3A  
(2005 Supp.)

No person may be convicted of **offering/soliciting/ attempting/endeavoring/conspiring** to manufacture a controlled dangerous substance unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **knowingly/intentionally**;

Second, **offering/soliciting/attempting/endeavoring/conspiring**;

Third, to manufacture;

Fourth, the controlled dangerous substance of [**Name of Substance**].

Statutory Authority: 63 O.S. 2001, § 2-408.

OUJI-CR 6-3B  
(2005 Supp.)

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of aggravated manufacturing a controlled dangerous substance unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **knowingly/intentionally**;

Second, **manufacturing/(attempting to manufacture)**;

Third, **[Specify Name and Amount of Substance Listed in 63 O.S. Supp. 2004, § 2-401(G)(3)]** .;

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Statutory Authority: 63 O.S. Supp. 2004, § 2-401(G)(3).

OUJI-CR 6-3C  
(2003 Supp.)



No person may be convicted of possession with intent to manufacture/distribute a controlled dangerous substance unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, knowing and intentional;

Second, possession;

Third, of the controlled dangerous substance of [**Name of Substance**];

Fourth, with an intent to **manufacture/distribute** [**Name of Substance**].

OUJI-CR 6-4  
(2000 Supp.)

No person may be convicted of **distributing/manufacturing** a controlled dangerous substance near a **[Specify Location Listed in 63 O.S Supp. 2004, § 2-401(F)]** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **knowingly/intentionally**;

Second, **(transporting with the intent to distribute)/distributing/(possessing with the intent to distribute) /(manufacturing)/ (attempting to manufacture)**;

Third, the controlled dangerous substance of **[Name of Substance]**;

Third, **[If Aggravated Manufacturing, Specify Name and Amount of Substance Listed in 63 O.S Supp. 2004, § 2-401(G)(3)]**;

Fourth, to a person **in/on/(within 2,000 feet of) [the real property comprising] [Specify Location Listed in 63 O.S Supp. 2004, § 2-401(F)]**.

OUJI-CR 6-5  
(2005 Supp.)

No person may be convicted of possession of a controlled dangerous substance unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, knowing and intentional;

Second, possession;

Third, of the controlled dangerous substance of [**Name of Substance**].

OUII-CR 6-6  
(2000 Supp.)

No person may be convicted of **use/possession/delivery/manufacture** of drug paraphernalia unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **knowingly/intentionally**;

Second, **using/possessing** drug paraphernalia;

Third, to **plant/propagate/cultivate/grow/harvest/manufacture/compound/convert/produce/process/prepare/test/analyze/pack/repack/store/contain/conceal/ingest/inhale/(introduce into the human body)**;

Fourth, the controlled dangerous substance of **[Name of Substance]**.

First, **delivering/possessing/manufacturing** drug paraphernalia;

Second, knowing that it was to be used;

Third, to **plant/propagate/cultivate/grow/harvest/manufacture/compound/convert/produce/process/prepare/test/analyze/pack/repack/store/contain/conceal/ingest/inhale/(introduce into the human body)**;

Fourth, the controlled dangerous substance of **[Name of Substance]**.

First, delivering drug paraphernalia;

Second, to a person under 18 years of age;

Third, who was at least 3 years younger than the defendant;

Fourth, knowing that it was to be used;

Fifth, to **plant/propagate/cultivate/grow/harvest/manufacture/compound/convert/produce/process/prepare/test/analyze/pack/repack/store/contain/conceal/ingest/inhale/(introduce into the human body)**;

Sixth, the controlled dangerous substance of **[Name of Substance]**.

OUII-CR 6-7  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

OUJI-CR 6-8  
(2000 Supp.)

No person may be convicted of **cultivation/production/(knowingly permitting the cultivation/production/[wild growing])** of any species of plant from which a controlled dangerous substance is derived unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, knowingly;

Second, **cultivating/producing/(permitting the cultivation/production/[wild growing] of)**;

Third, any species of plant from which is derived the controlled dangerous substance [**Name of Substance**];

Fourth, on land **owned/(controlled by)** the defendant.

OUII-CR 6-9  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

The controlled dangerous substance of marijuana includes all parts of the plant *Cannabis Sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks [except the resin extracted therefrom], fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

The substance "*Cannabis Sativa* L." includes all forms, varieties, and species of the plant genus "*cannabis*".

OUII-CR 6-10  
(2000 Supp.)

The law recognizes two kinds of possession, actual possession and constructive possession.

A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, knowingly has the power and the intention at a given time to exercise dominion or control over a thing, is then in constructive possession of it.

The possession prohibited by the law is not only that of actual physical custody of a controlled dangerous substance but also the constructive possession of it.

**[The law recognizes that possession may be sole or joint. In other words, possession need not be exclusive. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, their possession is joint. A person may be deemed to be in joint possession of a controlled dangerous substance which is in the physical custody of an associate if he/she willfully and knowingly shares with that other person the right to control the disposition or use of such substance.]**

However, mere proximity to a substance is insufficient proof of possession. There must be additional evidence of the defendant's knowledge and control. Such knowledge and control may be established by circumstantial evidence. Each fact necessary to prove the guilt of the defendant must be established by the evidence beyond a reasonable doubt. All of the facts and circumstances, taken together, must establish to your satisfaction the defendant's knowledge and control beyond a reasonable doubt.

If you find from the evidence beyond a reasonable doubt that the defendant, either alone or jointly with another, had constructive possession of **[Specify Controlled Dangerous Substance]** then you may find that such substance was in the possession of the defendant within the meaning of the word "possession" as used in these instructions.

OUII-CR 6-11



No person may be convicted of maintaining a place where controlled dangerous substances are kept unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, knowingly or intentionally;

Second, keeping or maintaining;

Third, any **store/shop/warehouse/(dwelling house)/building/vehicle/boat/ aircraft/place**;

Fourth, **(where persons using controlled dangerous substances in violation of the law often/customarily/generally go for the purpose of using such substances)/(used for the keeping or selling of controlled dangerous substances in violation of the law).**

The phrase "keeping or maintaining" as used in this instruction requires the defendant to have **control/ownership/management** of the **residence/structure/vehicle**, as distinguished from other persons resorting to it to **buy/use** controlled dangerous substances in violation of the law.

A conviction of the crime of maintaining a place where controlled dangerous substances are kept requires that the activity giving rise to the charge must be more than a single, isolated activity. Rather, the term implies an element of some degree of habitualness.

A conviction of the crime of maintaining a place where controlled dangerous substances are kept requires that a substantial purpose, and not necessarily the sole purpose, of the **residence/ structure/vehicle** is for **(the keeping or selling of controlled dangerous substances)/(the using of by persons resorting to the place for using controlled dangerous substances in violation of the law).**

The mere possession of limited quantities of a controlled dangerous substance by the person keeping or maintaining the **residence/structure/vehicle** for that person's personal use within that **residence/structure/vehicle** is insufficient to support a conviction of the crime of maintaining a place where controlled dangerous substances are kept.

OUII-CR 6-12  
(2000 Supp.)

You are instructed that no person may be convicted of trafficking in illegal drugs unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, knowingly;

Second, **distributed/manufactured/(brought into Oklahoma)/possessed**;

Third, **[Specify Amount of Controlled Dangerous Substance from 63 O.S. Supp. 2000, § 2-415(C)] of [Specify Controlled Dangerous Substance]**.

First, possessed;

Second, **[Specify Controlled Dangerous Substance]**;

Third, with the intent to manufacture;

Fourth, **[Specify Amount of Controlled Dangerous Substance from 63 O.S. Supp. 2000, § 2-415(C)] of [Specify Controlled Dangerous Substance]**.

First, **used/(solicited the use of)**;

Second, services of a person less than 18 years of age;

Third, to **distribute/manufacture**;

Fourth, **[Specify Amount of Controlled Dangerous Substance from 63 O.S. Supp. 2000, § 2-415(C)] of [Specify Controlled Dangerous Substance]**.

**[If you find that the defendant represented the amount of the (Specify Controlled Dangerous Substance) to be (Specify Amount of Controlled Dangerous Substance from 63 O.S. Supp. 2000, § 2-415(C)), then you may find the defendant guilty of trafficking in illegal drugs regardless of the actual amount.]**

OUII-CR 6-13  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

The defendant is charged with public **drunkenness/intoxication** on **[Date]** in **[Name of County]** County, Oklahoma.

OUII-CR 6-14  
(2000 Supp.)

No person may be convicted of public drunkenness/intoxication unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, that the defendant was **drunk/intoxicated**;

Second, in a public place.

OUII-CR 6-15

Cultivating - Note: See Committee Comments at OUJI-CR 6-9.

Dispensing - Delivering a controlled dangerous substance to an ultimate user or human research subject by or pursuant to the lawful order of a practitioner.

Reference: 63 O.S. Supp. 2001, § 2-101(11).

Distribute - "Distribute" means to deliver other than by administering or dispensing a controlled dangerous substance.

Reference: 63 O.S. Supp. 2001, § 2-101(12).

Drug Paraphernalia - Any kind of equipment, products, or materials that are **used/(intended for use) in planting/propagating/cultivating/growing/harvesting/manufacturing/compounding/converting/producing/processing/preparing/testing/analyzing/packaging/repackaging/storing/containing/concealing/injecting/ingesting/inhaling/(introducing into the body)** a controlled dangerous substance. It includes, but is not limited to **[Specify Applicable Item Listed in 63 O.S. 2001, § 2-101(36)]. [However, drug paraphernalia does not include (Specify Applicable Item Listed at the End of 63 O.S. 2001, § 2-101(36)).]**

Reference: 63 O.S. 2001, § 2-101(36). Note -- The last bracketed sentence should be given only when applicable.

Endeavoring - Endeavoring means any effort to do or accomplish the evil purpose that the law was enacted to prevent.

References: *United States v. Russell*, 255 U.S. 138, 143 (1921); *United States v. Ogle*, 613 F.2d 233, 241-42 (10th Cir. 1979).

Knowing - Being aware of the existence of facts that cause the act or omission to be criminal in nature. A person need not be aware of the applicable law to do an act "knowingly," but only needs to be aware of the applicable facts.

Reference: 21 O.S. 2001, § 96.

Manufacturing - Production, preparation, propagation, compounding, or processing a controlled dangerous substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis; or a combination of extraction and chemical synthesis.

Reference: 63 O.S. Supp. 2001, § 2-101(22).

Possession - Actual physical custody, or knowledge of the substance's presence, as well as power and intent to control its use or disposition.

References: *Miller v. State*, 579 P.2d 200 (Okla. Cr. 1978); *Staples v. State*, 528 P.2d 1131 (Okla. Cr. 1974). *See also* OUJI-CR 6-11, *supra*.

Willfully - Purposefully. Willfully does not require any intent to violate the law, or to injure another or to acquire any advantage.

Reference: 21 O.S. 2001, § 92.

OUJI-CR 6-16  
(2003 Supp.)

The defendant is charged with

**[driving a motor vehicle (while under the influence of (alcohol/(an intoxicating substance))/(with a blood/breath alcohol concentration of .08 or more)]**

**[being in actual physical control of a motor vehicle while under the influence of alcohol/(an intoxicating substance)]**

**[(being involved in)/causing an accident while under the influence of alcohol/(an intoxicating substance)]**

**[driving a motor vehicle with impaired ability]**

**[being in actual physical control of a motor vehicle while under the influence of alcohol/(an intoxicating substance)]**

**[leaving the scene of an accident with (personal injury)/death]**

**[failure to submit to drug and alcohol testing after an accident involving immediate death]**

**[driving under suspension/revocation]**

upon **[Description of Road, Highway, etc.]** on **[Date]** in **[Name of County]** County, Oklahoma.

OUII-CR 6-17

No person may be convicted of driving a motor vehicle (**while under the influence of alcohol**)/(with a **blood/breath alcohol concentration of .08 or more**) unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, driving;

Second, (**with a blood/breath alcohol concentration of 0.08 or more**)/(while under the influence of **alcohol**);

Third, a motor vehicle;

Fourth, on a (**public road/street/highway/turnpike/place**)/(private road/street/alley/lane which provides access to one or more single or multi-family dwellings) ;

[Fifth, the blood/breath alcohol test was administered on a sample taken from the defendant (within 2 hours after arrest)/(as soon as practical after the fatality/injury accident).]

OUJI-CR 6-18

No person may be convicted of driving a motor vehicle while under the influence of an intoxicating substance unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, driving;

Second, a motor vehicle;

Third, on a **(public road/street/highway/turnpike/place)/(private road/street/alley/lane which provides access to one or more single or multi-family dwellings)**;

Fourth, while under the **(influence of any intoxicating substance other than alcohol)/(combined influence of alcohol and any other intoxicating substance)** which may render a person incapable of safely driving a motor vehicle.

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OUI-CR 6-19



No person may be convicted of being in actual physical control of a motor vehicle while under the influence of **alcohol/(an intoxicating substance)** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, being in actual physical control of a motor vehicle;

Second, on a **(public road/street/highway/turnpike/street/place)/(private road/street/alley/lane which provides access to one or more single or multi-family dwellings)**;

Third, **(while having a blood/breath alcohol concentration of 0.08 or more)/(while under the influence of alcohol)/(while under the [influence of any intoxicating substance other than alcohol]/[combined influence of alcohol and any other intoxicating substance] which may render a person incapable of safely driving a motor vehicle)**;

[Fourth, the **blood/breath** alcohol test was administered within 2 hours after arrest).]

OUII-CR 6-20

No person may be convicted of being involved in an accident while under the influence of **alcohol/(an intoxicating substance)** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, being involved in a personal injury accident;

Second, while driving a motor vehicle;

Third, on a (**public road/street/highway/turnpike/place**)/(**private road/street/alley/lane which provides access to one or more single or multi-family dwellings**);

Fourth, (**while having a blood/breath alcohol concentration of 0.08 or more**)/(while under the influence of alcohol)/(while under the [influence of any intoxicating substance other than alcohol]/[combined influence of alcohol and any other intoxicating substance] which may render a person incapable of safely driving a motor vehicle);

[Fifth, the **blood/breath** alcohol test was administered within 2 hours after arrest).]

OUJI-CR 6-21

No person may be convicted of causing an accident while under the influence of **alcohol/(an intoxicating substance)** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, causing an accident;

Second, resulting in great bodily injury to another person;

Third, while driving a motor vehicle;

Fourth, on a **(public road/street/highway/turnpike/place/(private road/street/alley/lane which provides access to one or more single or multi-family dwellings))**;

Fifth, **(while having a blood/breath alcohol concentration of 0.08 or more)/(while under the influence of alcohol)/(while under the [influence of any intoxicating substance other than alcohol]/[combined influence of alcohol and any other intoxicating substance] which may render a person incapable of safely driving a motor vehicle)**;

[Sixth, the **blood/breath** alcohol test was administered within 2 hours after arrest).]

OUII-CR 6-22

No person may be convicted of driving a motor vehicle with impaired ability unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, driving;

Second, a motor vehicle;

Third, with impaired ability;

Fourth, due to **alcohol/(an intoxicating substance)**.

OUJI-CR 6-23  
(2013 Supp.)

If you find that a chemical analysis of the defendant's **blood/breath** was performed on a sample taken from the defendant within two hours of **(within 2 hours after arrest) /(as soon as practical after the fatality/injury accident)** , then the results of this analysis may be considered by you as to the issue of whether **(the defendant was under the influence of alcohol)/(the defendant's ability to drive a motor vehicle was impaired)**.

If you are convinced that the amount of alcohol, by weight or volume, in the defendant's blood was eight-hundredths of one percent (0.08%) or greater, then you may find the defendant to have been under the influence of alcohol. If, however, after considering the chemical analysis together with all other evidence in the case, you entertain a reasonable doubt as to whether the defendant was under the influence, then you should find **him/her** not to have been under the influence of alcohol.

If you are convinced that the amount of alcohol, by weight or volume, in the defendant's blood was more than five-hundredths of one percent (0.05%), then you may consider this evidence on the issue of whether the defendant's ability to drive a motor vehicle was impaired by alcohol. However, no person may be found to have been under impaired ability solely because of a blood alcohol count above 0.05%. You must find, in addition, and beyond a reasonable doubt, that the person's driving was affected by the consumption of alcohol to the extent that the public health and safety were threatened, or that the person's operation of a motor vehicle violated a State statute or local ordinance.

If you are convinced that the amount of alcohol, by weight or volume, in the defendant's blood was five-hundredths of one percent (0.05%) or less, then you must find the defendant not to have been under the influence of alcohol, unless you find by other competent evidence, and beyond a reasonable doubt, that the **(defendant's ability to drive a motor vehicle was impaired by alcohol)/(defendant was under the influence of alcohol)**.

OUII-CR 6-24  
(2005 Supp.)

No person may be convicted of leaving the scene of an accident with **(personal injury)/death** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the defendant drove a vehicle;

Second, involved in an accident;

Third, that resulted in **injury/death** of a person;

Fourth, **willfully/maliciously**;

Fifth, failed to immediately stop **his/her** vehicle **(at the scene of the accident)/ (as close to the accident as possible)** and remain there until:

(A) **he/she** had given **his/her** correct name, address, and the registration number of the vehicle **he/she** was driving and showed **his/her operator's/chauffeur's** license and security verification form to the **(person struck)/(driver or occupant of or person attending the vehicle he collided with)**; and

(B) **he/she** rendered reasonable assistance to any person injured in the accident.

Reasonable assistance may include taking or making arrangements to take the injured person to a physician/surgeon/hospital for **medical/surgical** treatment if **(it was apparent that such treatment was necessary)/(such treatment was requested by the injured person)**.

OUII-CR 6-25

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of failure to submit to drug and alcohol testing after an accident involving immediate death unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the defendant drove a vehicle;

Second, involved in an accident;

Third, that resulted in immediate death of a person;

Fourth, was cited for a traffic offense;

Fifth, **willfully/maliciously**;

Sixth, refused to submit to drug and alcohol testing requested by a law enforcement officer as soon as practicable after the accident occurred.

OUJI-CR 6-26

No person may be convicted of driving under **suspension/revocation** unless the State has proven beyond a reasonable doubt each element of the crime. These elements are:

First, the defendant drove a motor vehicle upon a public **road/street/highway/ turnpike/(public place)** in Oklahoma;

[Second], while **his/her (driver's/operator's license)/(privilege to drive a motor vehicle)** was **cancelled/denied/suspended/revoked.**]

[Second], while **he/she** was disqualified from driving.]

OUII-CR 6-27



The defendant is charged with

**[eluding/(attempting to elude) a (peace officer)/(game ranger)]**

**[causing an accident while eluding/(attempting to elude) an officer]**

on **[Date]** in **[Name of County]** County, Oklahoma.

OUII-CR 6-28

No person may be convicted of **eluding/(attempting to elude)** a **(peace officer)/(game ranger)** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, a driver of a motor vehicle;

Second, received a red light and siren from a **(peace officer)/(game ranger)**;

Third, showing the **officer's/ranger's** vehicle to be an official **police/ sheriff/(highway patrol)/(State game ranger)** vehicle and directing the driver to bring **his/her** vehicle to a stop; and

Fourth, willfully **[eluded the officer/ranger]/[attempted to elude the officer/ ranger (by increasing his/her speed)/(extinguishing his/her lights)/(in any manner)]**.

OUII-CR 6-29  
(2005 Supp.)

OUII-CR 6-30

No person may be convicted of ( **causing an accident**)/ ( **endangering another**) while **eluding**/( **attempting to elude**) a ( **peace officer**)/( **game ranger**) unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, a driver of a motor vehicle;

Second, received a red light and siren from a ( **peace officer**)/ ( **game ranger**);

Third, showing the **officer's/ranger's** vehicle to be an official **police/sheriff**/( **highway patrol**)/( **State game ranger**) vehicle and directing the driver to bring **his/her** vehicle to a stop;

Fourth, willfully [**eluded the officer/ranger**]/[**attempted to elude the officer/ranger (by increasing his/her speed)**]/ ( **extinguishing his/her lights**)/( **in any manner**); and,

Fifth, while **eluding**/( **attempting to elude**) the **officer/ranger**;

[Sixth, the driver caused an accident;

Seventh, that resulted in great bodily injury to another person.]

[Sixth, the driver endangered another person].

Great bodily injury means bodily injury (**that creates a substantial risk of death**)/( **causes [serious permanent disfigurement]**)/[ **protracted loss/ impairment of the function**] of a **bodily member/organ**).

OUII-CR 6-30  
(2005 Supp.)

INSTRUCTION No. \_\_\_\_\_

The defendant is charged with reckless driving by **[Brief Statement of Facts Allegedly Constituting Violation]** on **[Date]** in **[Name of County]** County, Oklahoma.

OUII-CR 6-31

No person may be convicted of reckless driving unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, driving;

Second, a motor vehicle;

Third, in a careless or wanton manner;

Fourth, **(without regard for the safety of persons or property)/(that violated lawful speed limits)/(that [failed to attain]/exceeded the speed that a careful and prudent person would have considered reasonable and proper having due regard for the traffic, surface, and width of the highway, and other conditions)/(that exceeded the speed that a careful and prudent person would have considered reasonable and proper in order to stop within the assured clear distance ahead).**

OUI-CR 6-32

INSTRUCTION No. \_\_\_\_\_

The defendant is charged with speeding by **[Brief Statement of Facts Allegedly Constituting Violation]** on **[Date]** in **[Name of County]** County, Oklahoma.

OUII-CR 6-33

No person may be convicted of speeding unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, driving;

Second, a motor vehicle;

Third, (in violation of lawful speed limits)/(in a manner that [failed to attain]/exceeded the speed that a careful and prudent person would have considered reasonable and proper having due regard for the traffic, surface, and width of the highway, and other conditions)/(in a manner that exceeded the speed that a careful and prudent person would have considered reasonable and proper in order to stop within the assured clear distance ahead).

OUII-CR 6-34

Actual Physical Control - Directing influence, domination or regulation of any motor vehicle, whether or not the motor vehicle is being driven or is in motion.

References: Crane v. State, 461 P.2d 986 (Okl. Cr. 1969); Bearden v. State, 430 P.2d 884 (Okl. Cr. 1967); Parker v. State, 424 P.2d 997 (Okl. Cr. 1967).

Careless or Wanton Manner - In disregard of an unreasonable risk of danger to another, when it is known or should be known that harm is highly probable to result.

References: Carter v. State, 376 P.2d 351 (Okl. Cr. 1962); Black's Law Dictionary 1419 (5th ed. 1979).

Driving - Operating a motor vehicle while it is in motion.

Reference: Parker v. State, 424 P.2d 997 (Okl. Cr. 1967).

Elude - To avoid, escape from, or evade, as by cunning, daring or artifice.

Reference: The American Heritage Dictionary 425 (1969).

Great Bodily Injury - Bodily injury which **(creates a substantial risk of death)/ (causes serious, permanent disfigurement)/(causes prolonged loss/impairment of the function of any bodily member/organ).**

Reference: 47 O.S. 2001, § 11-904(B)(2). .

Impaired Ability - See OUJI-CR 6-24, .

Reference: 47 O.S. Supp. 2001, § 756. .

Intoxicating Substance -- **[You are instructed that [Specify Controlled Dangerous Substance listed in 63 O.S. Supp. 2001, § 2-101 et seq.] is an intoxicating substance.]**

**[You are instructed that an intoxicating substance is any substance, other than alcohol, which is capable of being ingested/inhaled/injected/absorbed into the human body and is capable of adversely affecting (the central nervous system)/ vision/hearing/(any sensory/motor functions).]**

Reference: 47 O.S. Supp. 2001, § 1-140.1.

The first paragraph should be used if the intoxicating substance is a controlled dangerous substance, and the second paragraph should be used for any other intoxicating substance.

Motor Vehicle - Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks. Unless a title or registration has been issued, vehicles moved solely by animal power, implements of husbandry, special mobilized machinery, or self-propelled wheel chairs or tricycles for invalids are also excluded.

Reference: 47 O.S. 2001, §§ 1-186, 4-101.

Public Parking Lot- A parking lot on a right-of-way that is **(dedicated to public use)/(owned by the State of Oklahoma or a political subdivision of the State of Oklahoma).**

References: 47 O.S. 2001, § 1-142. *Houston v. State*, 1980 OK CR 63, ¶ 5, 615 P.2d 305, 306; *cf. Justus v. State ex rel. Dept. of Public Safety*, 2002 OK 46, ¶¶ 7-8, 61 P.3d 888, 890.



Peace Officer - Any sheriff, policeman, or any other law enforcement officer whose duty it is to enforce and preserve the public peace.

Reference: 21 O.S. Supp. 2001, § 99.

Property - Property includes:

- (a) Real Property - Every estate, interest, and right in lands, including structures or objects permanently attached to the land;
- (b) Personal Property - Money, goods, chattels, effects, evidences of rights in action, and written instruments effecting a monetary obligation or right or title to property.

References: 21 O.S. 2001, §§ 102, 103, 104.

Under the Influence - Condition in which **alcohol/(an intoxicating substance)/(a combination of alcohol and another/other intoxicating substance(s))** has/have so far affected the nervous system, brain, or muscles of the driver as to hinder, to an appreciable degree, **his/her** ability to operate a motor vehicle in a manner that an ordinary prudent and cautious person, if in full possession of **his/her** faculties, using reasonable care, would operate or drive under like conditions.

References: Stanfield v. State, 1978 OK CR 34, 576 P.2d 772; 47 O.S. Supp. 2001, § 11-902.

OUII-CR 6-35  
(2003 Supp.)

The defendant is charged with

**[unlawful possession of a firearm]**

**[transporting a loaded firearm]**

**[possessing a firearm while committing/(attempting to commit) a felony]**

**[possessing a firearm after conviction of a felony]**

on **[Date]** in **[Name of County]** County, Oklahoma.

OUJI-CR 6-36

(2000 Supp.)

No person may be convicted of unlawful possession of a firearm unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

OUJI-CR 6-37  
(2000 Supp.)

No person may be convicted of transporting a loaded firearm unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, knowingly;

Second, willfully;

Third, transporting;

Fourth, a **[Specify Type of Firearm]**;

Fifth, with a **(loaded clip/magazine)/(bullet/shell loaded in its chamber)**;

Sixth, in the **interior/(locked exterior compartment)/trunk**;

Seventh, of a motor vehicle;

Eighth, on a public **highway/roadway**.

OUJI-CR 6-37A  
(2000 Supp.)

No person may be convicted of possessing a weapon while committing a felony unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, knowing;

Second, willful;

Third, possession of;

Fourth, **a/an pistol/shotgun/rifle/(Specify Offensive Weapon Listed in 21 O.S. Supp. 1996, § 1287)/(offensive weapon);**

Fifth, while **committing/(attempting to commit)** the felony of **[Specify Underlying Felony];**

Sixth, the elements of the felony of **[Specify Underlying Felony]** are: **[Specify Elements];**

Seventh, the possession of the weapon was connected to the commission of or attempt to commit the felony.

Among the factors you may consider in determining whether the possession of the weapon was connected to the felony are:

1) the weapon was used to actually facilitate the commission of the felony; 2) the weapon was possessed or strategically located for use during the commission of the felony; 3) the weapon was intended to be used if a contingency arose or to make an escape; and 4) the weapon was to be used either offensively or defensively in a manner which would constitute a threat of harm.

OUJI-CR 6-38

No person may be convicted of possessing a firearm after conviction of a felony unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, knowingly and willfully;

Second, **possessing/(having under one's immediate control)/(having in any vehicle one operates)/(having in any vehicle in which one is riding as a passenger)/(having at the place where the defendant resides);**

Third, any **pistol/(imitation/homemade pistol)/(machine gun)/(sawed-off shotgun/rifle)/(dangerous/deadly firearm);**

Fourth, the defendant was convicted of a felony by the **[Name of Court]** Court of **[Name of Jurisdiction]** on **[Date]**.

OUI-CR 6-39

No child may be found delinquent for committing the offense of possession of a firearm/weapon by a child unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, knowing;

Second, willful;

Third, possession of;

Fourth, a [**Specify Type of Firearm or Weapon in 21 O.S. Supp. 2016, § 1272**].

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Statutory Authority: 21 O.S. Supp. 2016, § 1273(C).

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OUJI-CR 6-39A  
(2017 Supp.)

The defendant has raised the defense that **he/she** was in the possession of a firearm that was used for participation in **[Specify Activity Listed in 21 O.S. Supp. 2016, § 1273(C)]**. It is the burden of the State to prove beyond a reasonable doubt that the defendant was in the possession of a firearm that was not used for participation in **[Specify Activity Listed in 21 O.S. Supp. 2016, § 1273(C)]**.

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Statutory Authority: 21 O.S. Supp. 2016, § 1273(C).

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OUJI-CR 6-39B  
(2017 Supp.)



The defendant has presented evidence that **he/she** had no knowledge of the presence of a firearm **(under his/her immediate control)/(in the vehicle which he/she operated)/(in the vehicle in which he/she was a passenger)**. The question of whether the defendant knew of the presence of the firearm is a question of fact to be determined by the jury. Where there is a conflict in the evidence, it is the exclusive function of the jurors to weigh the evidence and determine the defendant's guilt or innocence. In determining whether the defendant had knowledge of the presence of the firearm you may consider circumstantial evidence.

OUJI-CR 6-40

The defendant is charged with

**[pointing a firearm at (Person at Whom Firearm Allegedly Pointed)]**

**[reckless conduct with a firearm]**

on **[Date]** in **[Name of County]** County, Oklahoma.

OUII-CR 6-41

No person may be convicted of pointing a firearm unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, pointing a **shotgun/rifle/pistol/(deadly weapon)**, whether loaded or unloaded;

Third, at any **person(s)**;

Fourth, without lawful cause;

Fifth, **(for the purpose of threatening)/(with the intention of discharging the firearm)/(with any malice)/(for any purpose of injuring, either through physical injury or mental or emotional intimidation)/(for purposes of whimsy/humor/[a prank]/(in anger or otherwise).**

OUJI-CR 6-42

INSTRUCTION No. \_\_\_\_\_

"Lawful cause" includes the pointing of shotguns, rifles, or pistols **(by [law enforcement authorities]/[members of the State Military Forces in the form of the Oklahoma Army/Air National Guard]/[members of the Federal Military Reserve and active military components] in the performance of their duties)/(by any federal government law enforcement officer in the performance of his/her duty)/ (in the performance of a play [on stage]/[at a rodeo]/[on television]/[on film])/(in defense of one's person/home/property).**

OUJI-CR 6-43

INSTRUCTION No. \_\_\_\_\_

No person can be convicted of reckless conduct with a firearm unless the State proves each element of the offense to your satisfaction, beyond a reasonable doubt. These elements are:

First, the defendant engaged in conduct with a loaded **shotgun/rifle/pistol**;

Second, which created a situation of unreasonable risk and probability of death or great bodily harm to another;

Third, and demonstrated a conscious disregard for the safety of another person.

OUII-CR 6-44

Firearm - Weapon from which a shot or projectile is discharged by force of a chemical explosive such as gunpowder. An airgun, such as a carbon dioxide gas-powered air pistol, is not a firearm within the meaning of this definition.

Reference: Jones v. State, 899 P.2d 635, 651 (Okla. Cr. 1995); Thompson v. State, 488 P.2d 944 (Okla. Cr. 1971), overruled on other grounds, 520 P.2d 381 (Okla. Cr. 1974).

Knowingly - Personally aware of the facts.

Reference: 21 O.S. 1991, § 96; Jones v. State, 899 P.2d 635, 651 (Okla. Cr. 1995).

Malice - A wish to vex, annoy, or injure another person.

Reference: 21 O.S. 1991, § 95.

Offensive Weapon - Any implement likely to produce death, bodily harm, or fear of death or bodily harm in the manner it is used or attempted to be used.

Pistol - Any firearm capable of discharging a projectile composed of any material which may reasonably be expected to be able to cause lethal injury, with a barrel or barrels less than sixteen inches in length and using either gunpowder, gas, or means of rocket propulsion, but not including flare guns, underwater fishing guns, or blank pistols.

Reference: 21 O.S. Supp. 1995, § 1289.3; Jones v. State, 899 P.2d 635, 651 (Okla. Cr. 1995).

Possessing - Having actual physical custody, or knowledge of the weapon's presence, as well as power and intent to control its use or disposition.

Reference: Jones v. State, 899 P.2d 635, 651 (Okla. Cr. 1995).

Sawed-off Rifle - Any firearm capable of discharging single projectiles composed of any material which may reasonably be expected to be able to cause lethal injury, using either gunpowder, gas or any means of rocket propulsion, designed with a barrel or barrels more than sixteen inches in length which have been reduced to less than sixteen inches in length and an overall length less than twenty-six inches, including the stock portion.

References: Price v. State, 532 P.2d 851 (Okla. Cr. 1975); 21 O.S. 1991 & Supp. 1995, §§ 1289.4, 1289.18.

Sawed-off Shotgun - Any firearm capable of discharging a series of projectiles of any material which may reasonably be expected to be able to cause lethal injury, using either gunpowder, gas, or any means of rocket propulsion, designed with a barrel more than eighteen inches in length which has been reduced to less than eighteen inches in length.

References: Price v. State, 532 P.2d 851 (Okla. Cr. 1975); 21 O.S. 1991 & Supp. 1995, §§ 1289.5, 1289.18.

Willful - Purposeful. Willful does not require any intent to violate the law, or injure another, or to acquire any advantage.

Reference: 21 O.S. 1991, § 92; Jones v. State, 899 P.2d 635, 651 (Okla. Cr. 1995).

OUJI-CR 6-45

INSTRUCTION No. \_\_\_\_\_

The defendant is charged with **resisting/obstructing a/an peace/ executive** officer on **[Date]** in **[Name of County]** County, Oklahoma.

OUII-CR 6-46

No person may be convicted of resisting **a/an peace/executive** officer unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, knowingly;

Second, by the use of **force/violence**;

Third, resisting;

Fourth, **a/an peace/executive** officer;

Fifth, in the performance of **his/her** official duties.

OUJI-CR 6-47



No person may be convicted of obstructing an officer in the performance of **his/her** official duties unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, **delayed/obstructed**;

Third, a [**Specify Public Officer**];

Fourth, known by the defendant to be a [**Specify Public Officer**];

Fifth, in the discharge of any duty of **his/her** office.

[A person does not have to use physical force to be guilty of obstructing an officer in the performance of his/her official duties.]

OUJI-CR 6-48

Executive Officer - An officer in the executive branch of government.

Reference: Spivey v. State, 69 Okl. Cr. 397, 104 P.2d 263 (1940).

Force - Act of aggression by one in resistance of interference with an officer.

References: Reams v. State, 551 P.2d 1168 (Okl. Cr. 1976); Cummins v. State, 6 Okl. Cr. 180, 117 P. 1099 (1911).

Knowingly - Personally aware of the facts.

Reference: 21 O.S. 1991, § 96.

Resisting - Opposing actively; withstanding; to be firm against proposed action.

Reference: American Heritage Dictionary 1106 (1969).

Violence - Physical force exerted for the purpose of damaging or abusing.

Reference: American Heritage Dictionary 1431 (1969).

OUII-CR 6-49

The defendant is charged with

**[escape/(attempted escape) from a peace officer]**

**[(escape from)/(unauthorized entry) a penal institution]**

**[(possession of)/bringing contraband in/into a prison/jail]**

**[jumping bail]**

on **[Date]** in **[Name of County]** County, Oklahoma.

OUJI-CR 6-50

No person may be convicted of escape from a peace officer unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, escape;

Second, from a peace officer;

Third, after being lawfully **arrested/detained** by such peace officer.

OUII-CR 6-51  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of attempted escape from a peace officer unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, attempting to escape;

Second, from a peace officer;

Third, after being lawfully **arrested/detained** by such peace officer.

OUII-CR 6-52  
(2000 Supp.)

No person may be convicted of escape from a penal institution unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, escape from a **(county/ city jail)**;

Second, by a **(prisoner in a county/city jail)**;

Third, **(awaiting charges for a felony offense)/(awaiting trial)/(having been sentenced on a felony charge to the Department of Corrections)/(having been lawfully detained)**;

Fourth, while he/she is **(actually confined there)/(permitted to be at large as a trusty)/(awaiting transportation to a Department of Corrections facility to serve his/her sentence)**.

**OR**

First, escape from the custody of the Department of Corrections;

Second, by an inmate in its custody;

Third, while **(actually confined in a correctional facility)/(assigned to a house arrest program)/(assigned to the Preparole Conditional Supervision Program)/(assigned to an alternative incarceration authorized by law)/(permitted to be at large as a trusty)**.

[An inmate assigned to **(house arrest)/(the Preparole Conditional Supervision Program)/(an alternative incarceration authorized by law)** shall be considered to have escaped if **(the inmate cannot be located within a 24 hour period)/(the inmate fails to report to a confining facility/institution as directed)**.]

[Custody means either imprisonment by physical means or restraint by a superior force acting as a moral restraint.]

[Escape means a departure from custody, with or without force, whether from the custody of an officer or from any place where one is lawfully confined.]

OUJI-CR 6-53

No person may be convicted of escape from a **(juvenile detention)/(secure juvenile)** facility unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, a **juvenile/youthful** offender lawfully placed in a **(juvenile detention)/(secure juvenile)** facility;

Second, absented **himself/herself** without official permission from the facility;

Third, while actually confined in the facility.

**OR**

First, a **juvenile/youthful** offender lawfully placed in a **(juvenile detention)/(secure juvenile)** facility;

Second, absented **himself/herself** without official permission while away from the facility;

Third, while escorted by a transportation officer.

**OR**

First, a **juvenile/youthful** offender lawfully placed in a **(juvenile detention)/(secure juvenile)** facility;

Second, while permitted to be on an authorized **pass/(work program)**; outside the facility;

[Third, could not be located within a twenty-four-hour period.]

**OR**

Third, failed to report to the facility at the specified time.]

**OR**

Third, absconded (from an electronic monitoring device)/(after removing an electronic monitoring device from his/her body).]

**OR**

Third, failed to return from a pass issued by a facility/(secure placement).]

OUJI-CR 6-53A

No person may be convicted of unauthorized entry into a penal institution unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, gaining entry;

Third, that is unauthorized;

Fourth, to **(a State penal institution)/(a jail)/(a place where prisoners are located)/(the grounds of a penal institution)**.

OUJI-CR 6-54



No person may be convicted of **(possession of)/bringing** contraband **in/into** a **prison/jail/(place where prisoners are located)** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, without authority;

Second, **bringing/(having possession of)**;

Third, **[a gun/knife/bomb/(dangerous instrument)]/[Specify Controlled Dangerous Substance Listed in 21 O.S. Supp. 1995, § 2-101]/[a beverage containing more than one-half of one percent alcohol by volume]/money**;

Fourth, **into/in a jail/(State penal institution)/(place where prisoners are located)**.

OUJI-CR 6-55

No person may be convicted of jumping bail unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the defendant was **(admitted to bail)/(released on recognizance/bond/ undertaking)**;

Second, in connection with a **(felony charge)/(pending appeal/certiorari after a felony conviction)**;

Third, the defendant **(incurred a forfeiture of the bail)/(violated the recognizance/bond/undertaking)**;

Fourth, the defendant willfully failed to surrender **himself/herself** within 5 days after the forfeiture of the bail.

OUII-CR 6-56

No person may be convicted of the removal of an electronic monitoring device unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, the person was charged with a **felony/misdemeanor**;

Second, the person was **(admitted to bail)/(released on recognizance/bond/undertaking for appearance before a magistrate/court)**;

Third, the person was required to wear an electronic monitoring device on the person's body as a condition of **bail/release**; and

Fourth, the person removed the electronic monitoring device without authorization from the court.

OUJI-CR 6-56A

INSTRUCTION No. \_\_\_\_\_

The defendant is charged with **(participating in a)/(incitement to)** riot on **[Date]** in **[Name of County]** County, Oklahoma.

OUII-CR 6-57

No person may be convicted of participating in a riot unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, participating with 2 or more other persons;

Second, who are acting together,;

Third, without authority of law;

[Fourth, in a **(use of force)/violence.**]

[Fourth, in a threat to use **force/violence**;

Fifth, accompanied by the immediate power of execution.]

OUII-CR 6-58

If you find beyond a reasonable doubt that the defendant committed the crime of participating in riot, you shall return a verdict of guilty by marking the Verdict Form appropriately.

If you have a reasonable doubt of the defendant's guilt of the charge of participating in riot, or you find that the State has failed to prove each element of the charge of participating in riot beyond a reasonable doubt, you shall return a verdict of not guilty by marking the Verdict Form appropriately.

If you find the defendant guilty, you shall then determine the proper punishment.

**[Select the appropriate paragraph]:**

If you determine that the State has proved that the crime of **murder/maiming/robbery/rape/arson** was committed in the course of the riot by proving the following elements beyond a reasonable doubt: **[specify elements]**, then the crime of participating in riot is punishable by **[state range of punishment]**.

If you determine beyond a reasonable doubt that the riotous assembly was to **(resist execution of [specify state or federal statute])/(obstruct [identify state or federal officer] in the performance of ([specify legal duty])/(serving/executing a [specify legal process])**, then the crime of participating in riot is punishable by imprisonment in the penitentiary not exceeding ten years and not less than two.

If you determine beyond a reasonable doubt that **[Name of Defendant]** was **(carrying a firearm/(deadly/dangerous weapon)/disguised** at the time of the riot, then the crime of participating in riot is punishable by imprisonment in the penitentiary not exceeding ten years and not less than two.

If you determine beyond a reasonable doubt that **[Name of Defendant]** **directed/advised/encouraged/solicited** other persons, who participated in the riot to acts of **force/violence**, then the crime of participating in riot is punishable by imprisonment in the penitentiary not exceeding ten years and not less than two.

Otherwise, it is punishable by a fine of up to \$1,000, or imprisonment for up to 1 year, or both. When you have decided on 1) whether **[Name of Defendant]** is guilty or not guilty, 2) whether **[specify additional findings for enhancement of punishment: e.g., [Name of Defendant] was carrying a firearm at the time of the riot]**, and 3) the proper punishment, you shall fill in the appropriate spaces on the Verdict Form for the crime of participating in riot and return the verdict to the Court.

OUJI-CR 6-58A  
(2000 Supp.)

No person may be convicted of incitement to riot unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **action/conduct**;

Second, that with the intent to cause, aid, or assist the initiation/continuation of a riot;

Third, urged other persons;

Fourth, to commit **[acts of unlawful force/violence]/[the unlawful burning/ destroying of property]/[the unlawful interference with a (police/peace officer)/fireman/ (member of the Oklahoma National Guard)/(a member of a unit of the armed services) who was officially assigned to riot duty in the lawful performance of his duty]**;

Fifth, the defendant's **act/conduct** created a clear and present danger of imminent unlawful action.].

A riot is defined as any use of force or violence, or any threat to use force or violence if accompanied by immediate power of execution, by 3 or more persons acting together and without authority of law.

OUII-CR 6-59  
(2000 Supp.)

No person may be convicted of terrorism unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, knowingly committed an act;

Second, of violence;

Third, that resulted in **(damage to property)/ (personal injury)**;

Fourth, with the intent to coerce;

Fifth, a **(civilian population)/government**;

Sixth, into granting illegal **political/economic** demands.

OR

First, knowingly committed an act;

Second, with the intent to incite violence;

Third, in order to create apprehension of;

Fourth, **(bodily injury)/(damage to property)**;

Fifth, in order to coerce;

Sixth, a **(civilian population)/government**;

Seventh, into granting illegal **political/economic** demands.

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Statutory Authority: 21 O.S. Supp. 2004, § 1268.1.

OUJI-CR 6-60  
(2005 Supp.)



No person may be convicted of terrorism hoax unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, simulated;

Third, an act of terrorism;

Fourth, as a **joke/hoax/prank/trick**;

Fifth, against a **place/population/business/agency/government**;

[Sixth], by intentionally;

Seventh, using a substance;

Eighth, to cause **fear/intimidation/anxiety**;

Ninth, and a reasonable belief;

Tenth, that the substance is **used/placed/sent/delivered/employed** as an act of biochemical terrorism;

Eleventh, that required an **(emergency response)/(evacuation/quarantine of any person/place/article)]**.

[Sixth], by **a/an act/threat of violence/sabotage/damage/harm**;

Seventh, against a **population/place/infrastructure**;

Eighth, that caused **fear/intimidation/anxiety**;

Ninth, and a reasonable belief by any victim;

Tenth, that the **act/threat** is an act of terrorism;

Eleventh, that is intended to disrupt a **place/population/business/agency/ government]**.

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Statutory Authority: 21 O.S. Supp. 2004, § 1268.1.

For definitions of biological terrorism and terrorism, see OUJI-CR 6-62, *infra*.

OUJI-CR 6-61  
(2005 Supp.)

Biochemical Terrorism – An act of terrorism involving any biological

organism or chemical or combination of organisms or chemicals that is capable of and intended to cause death, illness or harm to any human or animal upon contact or ingestion, or harm to any food or water supply or other product consumed by humans or animals.

Reference: 21 O.S. Supp. 2004, § 1268.1.

Terrorism – An act of violence resulting in damage to property or personal injury perpetrated to coerce a civilian population or government into granting illegal political or economic demands; or conduct intended to incite violence in order to create apprehension of bodily injury or damage to property in order to coerce a civilian population or government into granting illegal political or economic demands. Peaceful picketing or boycotts and other nonviolent action is not terrorism.

Reference: 21 O.S. Supp. 2004, § 1268.1.

OUII-CR 6-62  
(2005 Supp.)

The **defendant(s)** is/are charged with

**[cruelty to animals]**

**[(mistreatment of)/(interference with)/killing a police dog/horse]**

**[(mistreatment of)/(interference with)/killing a police dog/horse during the commission of a misdemeanor/felony]**

on **[Date]** in **[Name of County]** County, Oklahoma.

OUJI-CR 7-1

No person may be convicted of cruelty to animals unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, **willfully/maliciously**;

Second, **caused/procured/permitted/instigated/(tend ed to further)**;

Third, any animal in subjugation or captivity;

Fourth, **(to be)/being overdriven/overloaded/tortured/ destroyed/killed/ (cruelly beaten)/(cruelly injured)/mained/mutilated/(deprived of necessary food, drink, or shelter).**

OUII-CR 7-2

A person is justified in **destroying/injuring** an animal if:

First, **he/she** acted to defend **himself/herself/(another person)/(his/her home/ property)** against harm threatened by the animal;

Second, the animal's actions led **him/her** to reasonably believe that it would inflict the harm;

Third, the **destruction/injury** was reasonable in view of the seriousness of the harm threatened;

Fourth, **he/she** reasonably believed that the harm could only be prevented by immediate **destruction/injury** of the animal; and

Fifth, the kind and amount of force used was reasonably proportionate to the kind and amount of danger presented by the animal.

It is the burden of the State to prove beyond a reasonable doubt that the defendant was not justified in **destroying/injuring** an animal. If you find that the State has failed to sustain that burden, then the defendant must be found not guilty.

OUJI-CR 7-3

No person may be convicted of **(mistreatment of)/(interference with)** a police dog/horse unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, **striking/tormenting/(administering a nonpoisonous desensitizing substance to)/mistreating)/ (interfering with the lawful performance of)**;

Third, a police **dog/horse**;

Fourth, **owned/used** by;

Fifth, a law enforcement **agency [of a political subdivision]** of the State.

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Statutory Authority: 21 O.S. Supp. 2014, § 649.1.

OUJI-CR 7-4  
(2014 Supp.)

No person may be convicted of **(mistreatment of)/(interference with)** a police **dog/horse** during the commission of a **misdemeanor/felony** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, knowingly;

Second, willfully;

Third, without lawful cause or justification;

Fourth, **striking/tormenting/(administering a nonpoisonous desensitizing substance to)/mistreating)/ (interfering with the lawful performance of);**

Fifth, a police **dog/horse**;

Sixth, **owned/used** by;

Seventh, a law enforcement **agency [of a political subdivision]** of the State;

Eighth, during the commission of a misdemeanor/felony.

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Statutory Authority: 21 O.S. Supp. 2014, § 649.1.

OUII-CR 7-5  
(2014 Supp.)

No person may be convicted of **killing/beating/torturing/(injuring so as to disfigure/disable)/ (administering a poison to)/(setting a booby trap device for the purpose of injury so as to disfigure/disable/ kill)** a police **dog/horse** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, **killing/beating/torturing/(injuring so as to disfigure/disable)/(administering a poison to)/ (setting a booby trap device for the purpose of injury so as to disfigure/disable/kill)/ (paying/(agreeing to pay) bounty for the purpose of injury so as to disfigure/disable/kill);**

Third, a police **dog/horse**;

Fourth, **owned/used** by;

Fifth, a law enforcement **agency [of a political subdivision]** of the State.

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Statutory Authority: 21 O.S. Supp. 2014, § 649.2.

OUJI-CR 7-6  
(2014 Supp.)



No person may be convicted of **killing/beating/torturing/(injuring so as to disfigure/disable)/ (administering a poison to)/(setting a booby trap device for the purpose of injury so as to disfigure/disable/ kill)** a police **dog/horse** during the commission of a **misdemeanor/felony** unless the State has proved beyond a reasonable doubt each element of the crime.

These elements are:

First, knowingly;

Second, willfully;

Third, without lawful cause or justification;

Fourth, **killing/beating/torturing/(injuring so as to disfigure/disable)/(administering a poison to)/ (setting a booby trap device for the purpose of injury so as to disfigure/disable/kill)/(paying/(agreeing to pay) bounty for the purpose of injury so as to disfigure/disable/kill);**

Fifth, a police **dog/horse**;

Sixth, **owned/used** by;

Seventh, a law enforcement **agency [of a political subdivision]** of the State;

Eighth, during the commission of a **misdemeanor/felony**.

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Statutory Authority: 21 O.S. Supp. 2014, § 649.2.

OUII-CR 7-7  
(2014 Supp.)

INSTRUCTION No. \_\_\_\_\_

OUJI-CR 7-8

INSTRUCTION No. \_\_\_\_\_

No person may be convicted of operating a police frequency radio unless the State proves beyond a reasonable doubt each element of the crime. These elements are:

First, operating a mobile radio;

Second, that is capable of receiving transmissions made by a law enforcement agency;

Third, **(for an illegal purpose)/(while committing a crime)**.

OUII-CR 7-9

The **defendant(s) is/are** charged with using **[specify communications facility described in 13 O.S. 2011, § 176.2(5), such as a telephone]** to commit a felony on **[Date]** in **[Name of County]** County, Oklahoma.

\_\_\_\_\_  
Statutory Authority: 13 O.S. 2011, § 176.3(8).

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OUII-CR 7-11  
(2017 Supp.)

No person may be convicted of using a [specify communications facility described in 13 O.S. 2011, § 176.2(5), such as a telephone] to commit a felony unless the State proves beyond a reasonable doubt each element of the crime. These elements are:

First, willfully using a [specify communications facility described in 13 O.S. 2011, § 176.2(5), such as a telephone];

Second, in committing/(causing/facilitating the commission of);

Third, the crime of [specify felony listed in 13 O.S. Supp. 2016, § 176.7].

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OUII-CR 7-12

INSTRUCTION No. \_\_\_\_\_

Evidence has been introduced of defense of another as a defense to the charge that the defendant has committed the crime of **[Crime Charged in Information/Indictment]**.

OUJI-CR 8-1

A person was justified in using deadly force in defense of another person when the person using force reasonably believed that use of deadly force was necessary to **(prevent death or great bodily harm to another)/(stop/prevent the commission of a felony that involved the use/(threat of) physical force/violence against any person)**. Defense of another is a defense although the danger to the life or personal security of the other person may not have been real, if a reasonable person, in the circumstances and from the viewpoint of the defendant, would reasonably have believed the use of deadly force was necessary to **(prevent death or great bodily harm to another)/(stop/prevent the commission of a felony that involved the use/(threat of) physical force/violence against any person)**.

OUII-CR 8-2

INSTRUCTION No. \_\_\_\_\_

A person is justified in using reasonable force in aid or defense of another person who is about to be injured during the commission of a crime.

OUJI-CR 8-3



A person is justified in using force in defense of another if that person reasonably believed that use of force was necessary to protect another from imminent danger of bodily harm. Defense of another is a defense although the danger to the personal security of another may not have been real, if a reasonable person, in the circumstances and from the viewpoint of the defendant, would reasonably have believed that another was in imminent danger of bodily harm. The amount of force used may not exceed the amount of force a reasonable person, in the circumstances and from the viewpoint of the defendant, would have used to prevent the bodily harm.

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Statutory Authority: 21 O.S. 2011, § 643(3).

It should be pointed out that justifiable use of nondeadly force in defense of another is not limited by the statutory language of section 643(3) to any specific, named persons. Hence, a person can come to the defense of any other person with nondeadly reasonable force. If the person defended against should then accidentally be killed, the homicide would seem to be an excusable homicide under 21 O.S. 2011, § 731(1). *See Adams v. State*, 1951 OK CR 20, 93 Okl. Cr. 333, 338-39, 228 P.2d 195, 198; *Johnson v. State*, 1936 OK CR 66, 59 Okl. Cr. 283, 295-96, 58 P.2d 156, 162. To the defendant, it is immaterial whether the homicide is called excusable or justifiable for purposes of criminal law, because in either instance the defendant is entitled to be found not guilty. (See also the instructions on excusable homicide, OUJI-CR 8-28 and OUJI-CR 8-29.)

OUJI-CR 8-4  
(2017 SUPP.)

INSTRUCTION No. \_\_\_\_\_

It is the burden of the State to prove beyond a reasonable doubt that the defendant was not acting in defense of another. If you find that the State has failed to sustain that burden, then the defendant must be found not guilty.

OUJI-CR 8-5

INSTRUCTION No. \_\_\_\_\_

Defense of another is permitted as a defense solely because of necessity. Defense of another is not available to a defendant when the person on whose behalf the defendant intervened **(was the aggressor)/(provoked another with the intent to cause the altercation)/(voluntarily entered into mutual combat)**, no matter how great the danger to personal security became during the altercation unless the right of defense of another is reestablished.

OUII-CR 8-6

INSTRUCTION No. \_\_\_\_\_

If the person on whose behalf the defendant intervened **(was the original aggressor)/(provoked another with the intent to cause the altercation)/(voluntarily entered into mutual combat)** but withdrew or attempted to withdraw from the altercation and communicated **his/her** desire to withdraw to the other **participant(s)** in the altercation, then the defendant would be entitled to the defense of defense of another.

OUII-CR 8-7

INSTRUCTION No. \_\_\_\_\_

If the person on whose behalf the defendant intervened **(was not the original aggressor)/(did not provoke another with the intent to cause the altercation)/(did not voluntarily enter into mutual combat)**, the defendant may act on his/her reasonable belief that the person is in imminent danger of **(death or great bodily harm)/(bodily harm)**.

OUJI-CR 8-8

INSTRUCTION No. \_\_\_\_\_

A person is an aggressor when that person by **his/her** wrongful conduct provokes, brings about, or continues an altercation.  
**[The use of words alone cannot make a person an aggressor.]**

OUJI-CR 8-9

INSTRUCTION No. \_\_\_\_\_

Defense of another is available to a defendant when the person on whose behalf the defendant intervened was a trespasser only if the trespasser availed or attempted to avail **himself/herself** of any reasonably safe means of retreat from the imminent danger of **(death or great bodily harm)/(bodily harm)** before repelling or attempting to repel an unlawful attack.

OUJI-CR 8-10

INSTRUCTION No. \_\_\_\_\_

A person is a trespasser if that person has **([entered without consent]/[is unlawfully] upon the land of another)/(refused to leave the land of another after a lawful request to leave has been made to him/her).**

OUJI-CR 8-11



Bodily Harm - Any touching of a person against **his/her** will with physical force, in an intentional, hostile, and aggressive manner.

Reference: Black's Law Dictionary 222 (Rev. 4th ed. 1968).

Deadly Force - Force intended or likely to cause death or great bodily injury.

References: Gransden v. State, 12 Okl. Cr. 417, 158 P. 157 (1916); R. Perkins, Criminal Law 993 (2d ed. 1969).

Great Bodily Harm - Serious and severe bodily injury. Such injury must be of a greater degree than a mere battery.

Reference: Roddie v. State, 19 Okl. Cr. 63, 198 P. 342 (1921).

Imminent Danger - Danger that is pressing, urgent or immediate.

References: Lary v. State, 50 Okl. Cr. 111, 296 P. 512 (1931); Turner v. State, 4 Okl. Cr. 164, 111 P. 988, 998 (1910); R. Perkins, Criminal Law 994 (2d ed. 1969).

Master - Male employer.

Reference: Black's Law Dictionary 879 (5th ed. 1979).

Mistress - Female employer.

Reference: Webster's Third New International Dictionary 1446 (1961).

Reasonably Safe Opportunity - An opportunity to retreat with complete safety.

Reference: W. LaFave & A. Scott, Criminal Law § 53, at 396 (1972).

Servant - Employee.

Reference: Black's Law Dictionary 1227 (5th ed. 1979).

OUII-CR 8-12

INSTRUCTION No. \_\_\_\_\_

Evidence has been introduced of defense of property as a defense to the charge that the defendant has committed the crime of **[Crime Charged in Information/ Indictment]**.

OUJI-CR 8-13

INSTRUCTION No. \_\_\_\_\_

A person is justified in using deadly force when resisting any attempt by another to commit a felony upon or in any dwelling house in which that person is lawfully present. Defense of habitation is a defense although the danger that a felony would be committed upon or in the dwelling house may not have been real, if a reasonable person, in the circumstances and from the viewpoint of the defendant, would reasonably have believed that there was an imminent danger that such felony would occur.

OUII-CR 8-14

**A/An person/(owner/manager/employee of a business)** is justified in using force that is intended or likely to cause death or great bodily harm to another person who **(was in the process of unlawfully and forcefully entering)/(unlawfully and forcibly entered)** a **dwelling/residence/(occupied vehicle)/(place of business)** if the person using the force knew or had reason to believe that an unlawful and forcible entry **(was occurring)/(had occurred)**.

**A/An person/(owner/manager/employee of a business)** is justified in using force that is intended or likely to cause death or great bodily harm if the person against whom the force was used **(had attempted to remove)/(was attempting to remove)** another person against the will of that other person from a **dwelling/residence/(occupied vehicle)/(place of business)** and the person using the force knew or had reason to believe that an unlawful and forcible **removal/(attempt to remove) (was occurring)/(had occurred)**.

[A person is not justified in using force if:

The person against whom the force is used **(has the right to be in)/(is a lawful resident of)** the **dwelling/residence/(occupied vehicle)**, such as a/an owner/lessee/titleholder, and there is not a **(protective order from domestic violence in effect)/(a written pretrial supervision order of no contact)** against that person.

The **person/persons** sought to be removed are **children/grandchildren/(in the lawful custody/( under the lawful guardianship)** of the person against whom the force is used.

The person who uses force is **(engaged in)/(using the dwelling/residence/(occupied vehicle)/(place of business** to further) an unlawful activity.]

["Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people.]

["Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.]

["Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.]

OUJI-CR 8-15

A person has no duty to retreat and has the right to stand **his/her** ground and meet force with force, including deadly force, if **he/she** is not engaged in an unlawful activity and is attacked in any place where **he/she** has a right to be, if **he/she** reasonably believes it is necessary to do so to prevent **(death/(great bodily harm) to himself/herself/ another)/(the commission of a forcible felony)**.

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Statutory Authority: 21 O.S. 2011, § 1289.25 (D), (F).

OUJI-CR 8-15A  
(2017 SUPP.)

INSTRUCTION No. \_\_\_\_\_

A person is justified in using force in preventing or attempting to prevent a trespass or other unlawful interference with real or personal property in **his/her** lawful possession. Defense of property is a defense although the danger to the property defended may not have been real, if a reasonable person, in the circumstances and from the viewpoint of the defendant, would reasonably have believed the danger of interference to be imminent. The amount of force used may not exceed that amount of force a reasonable person, in the circumstances and from the viewpoint of the defendant, would have used to prevent the trespass or unlawful interference.

OUII-CR 8-16

INSTRUCTION No. \_\_\_\_\_

It is the burden of the State to prove beyond a reasonable doubt that the defendant was not acting in defense of property. If you find that the State has failed to sustain that burden, then the defendant must be found not guilty.

OUJI-CR 8-17

Deadly Force - Force intended or likely to cause death or great bodily injury.

Reference: R. Perkins. Criminal Law 993 (2d ed. 1969).

Property - Property includes:

- (a) Real Property - Every estate, interest, and right in lands, including structures or objects permanently attached to the land;
- (b) Personal Property - Money, goods, chattels, effects, evidences of rights in action, and written instruments effecting a monetary obligation or right or title to property.

References: 21 O.S. 1991, §§ 102, 103, 104.

OUII-CR 8-18



INSTRUCTION No. \_\_\_\_\_

Evidence has been introduced of duress as a defense to the charge that the defendant has committed the crime of [**Crime Charged in Information/Indictment**].

OUJI-CR 8-19

INSTRUCTION No. \_\_\_\_\_

A person is entitled to the defense of duress if that person committed the **act(s)/omission(s)** which constitute the crime because of a reasonable belief that **(he/ she)/(his/her spouse/child)** was in imminent danger of death or great bodily harm from another.

OUJI-CR 8-20

A person is not entitled to the defense of duress if **he/she** fails to use a reasonably safe opportunity to escape from the imminent danger of death or great bodily harm.

OUJI-CR 8-21

INSTRUCTION No. \_\_\_\_\_

It is the burden of the State to prove beyond a reasonable doubt that the defendant was not acting under duress. If you find that the State has failed to sustain that burden, then the defendant must be found not guilty.

OUJI-CR 8-22

Omission - Failure to act when there is a legal duty to do so.

References: Wharton's Criminal Law § 25:116-17 (14th ed. 1978); R. Perkins, Criminal Law 591 (2d ed. 1969).

OUII-CR 8-23

INSTRUCTION No. \_\_\_\_\_

Evidence has been introduced of entrapment as a defense to the charge of [**Crime Charged in Information/Indictment**].

OUII-CR 8-24

Where a person has no previous intent or purpose to violate the law, but is induced or persuaded by law enforcement officers to commit a crime, **he/she** is entitled to the defense of entrapment, because the law as a matter of policy forbids a conviction in such a case.

On the other hand, where a person already has the readiness and willingness to break the law, the mere fact that a police officer provides what appears to be a favorable opportunity is no defense.

If you should find from the evidence that, before anything at all occurred respecting the alleged offense involved in this case, the defendant was ready and willing to commit a crime such as that charged in the information whenever opportunity was offered and the police merely offered the opportunity, the defendant is not entitled to the defense of entrapment.

If, on the other hand, you should find that the defendant had no previous intent or purpose to commit any offense of the character here charged, and did so only because **he/she** was induced or persuaded by some agent of the police, then the government has seduced an innocent person, and the defense of entrapment is a good defense.

In a case where sufficient evidence is presented to raise the issue of sentence entrapment, this language must be modified to make it clear to the jury that the issue is whether or not the defendant, although intending to commit a lesser offense, has been entrapped into committing a greater offense. If the defendant had no previous intent to commit the greater crime or did not become ready and willing to commit a greater crime during the course of the transaction, even though predisposed to commit the lesser crime, then a finding that law enforcement agents committed sentencing entrapment would require that the defendant be found not guilty of the greater crime, and guilty of the lesser offense.

2003 OK CR 4, ¶ 10, 66 P.3d at 990.

OUII-CR 8-25  
(2005 Supp.)

INSTRUCTION No. \_\_\_\_\_

It is the burden of the State to prove beyond a reasonable doubt that no entrapment occurred. If you find that the State has failed to sustain that burden, then the defendant must be found not guilty.

OUII-CR 8-26



INSTRUCTION No. \_\_\_\_\_

Evidence has been introduced of excusable homicide as a defense to the charge that the defendant has committed the crime of **[Crime Charged in Information/ Indictment]**.

OUJI-CR 8-27

INSTRUCTION No. \_\_\_\_\_

A homicide is excusable when committed by lawful means, with usual and ordinary caution, and without any unlawful intent, but occurs by accident and misfortune while doing some lawful act.

OUII-CR 8-28

INSTRUCTION No. \_\_\_\_\_

A homicide is excusable when committed by accident and misfortune **(in the heat of passion)/(upon any sudden and sufficient provocation)/(upon sudden combat)**, provided that no undue advantage is taken, nor dangerous weapon used, and that the killing is not done in a cruel and unusual manner.

OUJI-CR 8-29

INSTRUCTION No. \_\_\_\_\_

It is the burden of the State to prove beyond a reasonable doubt that the death is not excusable homicide. If you find that the State has failed to sustain that burden, then the defendant must be found not guilty.

OUII-CR 8-30

Defendant has raised the Defense of Mental Illness and asserts he/she should be found not guilty by reason of mental illness for **[Crime Charged in Information/ Indictment]**. Under Oklahoma law, no person can be convicted of a crime if that person was:

- 1) mentally ill at the time of the commission of the acts or omissions that constitute the crime, and
- 2) was either unable to understand the nature and consequences of his or her actions or was unable to differentiate right from wrong, and
- 3) **has not been** diagnosed with antisocial personality disorder which substantially contributed to the act for which the person has been charged.

OUJI-CR 8-31  
(2018 Supp.)

The existence of mental illness standing alone is not sufficient to establish the Defense of Mental Illness. Instead, a person is not guilty by reason of mental illness when that person committed the act for which the person has been charged while mentally ill and was either unable to understand the nature and consequences of **his/her** actions or was unable to differentiate right from wrong, and has not been diagnosed with antisocial personality disorder which substantially contributed to the act for which the person has been charged.

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Statutory Authority: 21 O.S. 2011, § 152(4); 22 O.S. 2011 & Supp. 2017, §§ 914, 1161.

OUII-CR 8-32  
(2019 Supp.)

I am also required by law to instruct you concerning the verdict of guilty with a mental defect. A person is guilty with mental defect if that person committed the act for which the person was charged and was either unable to understand the nature and consequences of **his/her** actions or was unable to differentiate right from wrong, **and has been** diagnosed with antisocial personality disorder which substantially contributed to the act for which the person has been charged. At the end of these instructions you will be asked to determine whether the Defendant is guilty, guilty with a mental defect, not guilty, or not guilty by reason of mental illness.

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Statutory Authority: 22 O.S. Supp. 2017, § 1161(H)(4).

OUII-CR 8-33  
(2019 Supp.)

In considering the Defense of Mental Illness, you shall first determine whether, at the time of the commission of the acts or omissions that constitute the crime, the defendant was either unable to understand the nature and consequences of **his/her** actions or was unable to differentiate right from wrong. If you find that the defendant was able to understand the nature and consequences of **his/her** actions and was able to differentiate right from wrong, then the Defense of Mental Illness does not apply.

If you find either that the defendant was unable to understand the nature and consequences of his or her actions or was unable to differentiate right from wrong, then you must determine whether the defendant has been diagnosed with antisocial personality disorder which substantially contributed to the act for which the person has been charged. If you find that the defendant has been so diagnosed and that **his/her** antisocial personality disorder substantially contributed to **his/her** criminal act, you shall find the defendant guilty with mental defect if the State has proved all elements of the charged offense beyond a reasonable doubt.

If you find that the defendant has not been diagnosed with antisocial personality disorder or that the disorder did not substantially contribute to **his/her** criminal act, you must determine whether the defendant is mentally ill. If you find that at the time of the commission of the acts or omissions that constitute the crime the defendant was mentally ill, and that the defendant was either unable to understand the nature and consequences of **his/her** actions or was unable to differentiate right from wrong, then the defendant is not guilty by reason of mental illness. If you find that the defendant was not mentally ill, then the Defense of Mental Illness does not apply.

OUII-CR 8-33A  
(2018 Supp.)



Every person is presumed to be of sound mind, and unless evidence is produced that the defendant is not guilty by reason of mental illness, the defense of mental illness does not apply. Therefore, unless you determine that sufficient evidence has been presented to raise a reasonable doubt that the defendant is not guilty by reason of mental illness, the State may rely on this presumption and not offer any proof that the defense of mental illness does not apply. However, if sufficient evidence has been presented to raise a reasonable doubt that the defendant is not guilty by reason of mental illness, the State has the burden to prove beyond a reasonable doubt that the defendant was not acting under circumstances sufficient to constitute the defense of mental illness. If you find that the State has failed to sustain that burden, then the defendant must be found not guilty by reason of mental illness.

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Statutory Authority: 21 O.S. 2011, § 152(4); 22 O.S. 2011 & Supp. 2017, §§ 914, 1161.

OUJI-CR 8-33B

INSTRUCTION No. \_\_\_\_\_

If you decide that the defendant is not guilty by reason of mental illness at the time of the commission of the crime charged, the defendant shall not be released from confinement in a mental hospital until the court determines that the defendant is dangerous to the public peace and safety by being a risk of harm to **himself/herself** or others on account of a mental illness.

If you decide that the defendant is guilty with mental defect, you shall then determine the proper punishment as prescribed in these Instructions.

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Statutory Authority: 22 O.S. Supp. 2017, § 1161(A)(2), (A)(5).

OUII-CR 8-33C

Mental Illness A person is mentally ill if that person has a substantial disorder of thought, mood, perception, psychological orientation or memory that significantly impaired judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life.

Mental Defect A person has a mental defect if that person has been diagnosed with antisocial personality disorder which substantially contributed to the act for which the person has been charged.

Antisocial Personality Disorder An antisocial personality disorder is a pervasive pattern of disregard for and violation of the rights of others, occurring since the age of fifteen (15). It is indicated by three or more of the following:

1. Failure to conform to social norms with respect to lawful behaviors, as indicated by repeatedly performing acts that are grounds for arrest.
2. Deceitfulness, as indicated by repeated lying, use of aliases, or conning others for personal profit or pleasure.
3. Impulsivity or failure to plan ahead.
4. Irritability and aggressiveness, as indicated by repeated physical fights or assaults.
5. Reckless disregard for safety of self or others.
6. Consistent irresponsibility, as indicated by repeated failure to sustain consistent work behavior or honor financial obligations.
7. Lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another.

In addition, 1) the individual is at least eighteen (18) years of age, 2) there is evidence of conduct disorder with onset before fifteen (15) years of age, and 3) the occurrence of antisocial behavior is not exclusively during the course of schizophrenia or bipolar disorder.

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Statutory Authority: 22 O.S. Supp. 2017, § 1161(H).

The DSM-5 also includes an alternative approach to the diagnosis of personality disorder, which is found in Section III. The alternative approach was developed for DSM-5 for further study, and it is "based on a literature review of reliable clinical measures of core impairments central to personality pathology." DSM-5 Appendix, at p. 816. The DSM-5 states: "The current approach to personality disorders appears in Section II of DSM-5, and an alternative model developed for DSM-5 is presented here in Section III. The inclusion of both models in DSM-5 reflects the decision of the APA Board of Trustees to preserve continuity with current clinical practice, while also introducing a new approach that aims to address numerous shortcomings of the current approach to personality disorders." DSM-5, Section III, at 763.

OUJI-CR 8-33D  
(2019 Supp.)

INSTRUCTION No. \_\_\_\_\_

)

)

**Plaintiff,**

)

**vs**

)

)

**Case No.** \_\_\_\_\_

**JOHN DOE,**

)

**Defendant.**

)

)

**We, the jury, empaneled and sworn in the above-entitled cause, do, upon our oaths, find as follows:**

**Defendant is:**

\_\_\_\_\_ **Guilty and fix punishment at** \_\_\_\_\_.

\_\_\_\_\_ **Guilty with mental defect and fix punishment at** \_\_\_\_\_.

\_\_\_\_\_ **Not guilty.**

\_\_\_\_\_ **Not guilty by reason of mental illness.**

\_\_\_\_\_  
**FOREPERSON**

\_\_\_\_\_  
**Statutory Authority: 21 O.S. 2011, § 152(4); 22 O.S. 2011 & Supp. 2017, §§ 914, 1161.**

OUII-CR 8-34

INSTRUCTION No. \_\_\_\_\_

Evidence has been introduced of intoxication of the **defendant** as a defense to the charge that the defendant has committed the crime of [**Crime Charged in Information/Indictment**].

OUJI-CR 8-35

INSTRUCTION No. \_\_\_\_\_

The crime of **[Crime Charged in Information/Indictment]** has as an element the **specific criminal intent of [Insert Specific Intent Required By the Statute]**. A person is entitled to the defense of intoxication if that person was incapable of forming the specific criminal intent of **[Insert Specific Intent Required By the Statute]** because of **his/her** intoxication.

OUJI-CR 8-36  
(2010 Supp.)

INSTRUCTION No. \_\_\_\_\_

The defense of intoxication can be established by proof of intoxication caused by **narcotics/drugs/(hallucinogenic substances)**.

This instruction should be given only in cases in which intoxication induced by nonalcoholic substances is used as a defense. The instruction is simply a clarifying instruction to the jury. No clarifying instruction is needed when intoxication induced by the traditional means of alcohol is used as a defense.

OUII-CR 8-37  
(2010 Supp.)

INSTRUCTION No. \_\_\_\_\_

It is the burden of the State to prove beyond a reasonable doubt that the defendant formed the specific criminal intent of **[Insert Specific Intent Required By the Statute]**. If you find that the State has failed to sustain that burden, by reason of the intoxication of **[Name of Defendant]**, then **[Name of Defendant]** must be found not guilty of **[Crime Charged in Information/ Indictment]**. You may find **[Name of Defendant]** guilty of **[Lesser Included Offense]**, if the State has proved beyond a reasonable doubt each element of the crime of **[Lesser Included Offense]**.

OUII-CR 8-38  
(2010 Supp.)



Drugs - Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in a human or other animal; substances other than food intended to affect the structure or any function of the body of a human or other animal; under the law, the substance **[Name of Substance]** is a drug.

Note: Name, as applicable, substances listed in the Uniform Controlled Dangerous Substances Act, 63 O.S. 2001 & Supp. 2009, §§ 2-101 et seq., United States and homeopathic pharmacopoeias and National Formulary.

References: 63 O.S. 2001 & Supp. 2009, §§ 2-101 et seq.

Intoxication - A state in which a person is under the influence of an intoxicating **liquor/drug/substance** to such an extent that **his/her (passions are visibly excited)/ (judgment is impaired)**.

Reference: Findlay v. City of Tulsa, 1977 OK CR 113 , ¶ 14, 561 P.2d 980 , 984.

Narcotic Drug - Opium, coca leaves, opiates, cocaine, ecgonine, and all isomers, compounds and preparations derivative therefrom.

Reference: 63 O.S. Supp. 2009, § 2-101(26).

OUII-CR 8-39  
(2010 Supp.)

INSTRUCTION No. \_\_\_\_\_

Evidence has been introduced of involuntary intoxication as a defense to the charge that the defendant has/have committed the crime of **[Crime Charged in Information/Indictment]**.

OUJI-CR 8-40

INSTRUCTION No. \_\_\_\_\_

A person is entitled to the defense of involuntary intoxication if, at the time of the commission of the acts/omissions that constitute the crime, that person did not know that **his/her acts/omissions** were wrong and was unable to distinguish right from wrong with respect to **his/her acts/omissions**. A person is also entitled to the defense of involuntary intoxication if that person did not understand the nature and consequences of **his/her acts/omissions**. The inability to know right from wrong or to understand the nature and consequences of **his/her** acts must be caused by the involuntary use of an intoxicant.

OUJI-CR 8-41

Involuntary intoxication is a state of intoxication that has been induced **(under duress on the part of another)/(by force of another)/(by ignorance of the character of medication or other substances taken, whether the ignorance results from the defendant's own innocent mistake or from fraud/trickery of another).**

OUJI-CR 8-42

INSTRUCTION No. \_\_\_\_\_

The defense of involuntary intoxication can be established by proof of intoxication caused by **narcotics/drugs/(hallucinogenic substances)**.

OUII-CR 8-43

INSTRUCTION No. \_\_\_\_\_

It is the burden of the State to prove beyond a reasonable doubt that the defendant did know that **his/her acts/omissions** were wrong, was able to distinguish right from wrong with respect to **his/her acts/omissions**, and understood the nature and consequences of **his/her acts/omissions** at the time of the commission of the **acts/omissions** that constitute the crime. If you find that the State has failed to sustain that burden, then the defendant must be found not guilty.

OUII-CR 8-44

INSTRUCTION No. \_\_\_\_\_

Evidence has been introduced of self-defense as a defense to the charge that the defendant has committed the crime of **[Crime Charged in Information/Indictment]**.

OUJI-CR 8-45

A person is justified in using deadly force in self-defense if that person reasonably believed that use of deadly force was necessary to prevent death or great bodily harm to **himself/herself** or to terminate or prevent the commission of a forcible felony against **himself/herself**. Self-defense is a defense although the danger to life or personal security may not have been real, if a reasonable person, in the circumstances and from the viewpoint of the defendant, would reasonably have believed that **he/she** was in imminent danger of death or great bodily harm.

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Statutory Authority: 21 O.S. Supp. 2016, § 733.

Subsection 1 of 21 O.S. Supp. 2016, § 733 provides that homicide is justifiable "[w]hen resisting any attempt ... to commit any felony upon him." Nevertheless, the Court of Criminal Appeals has held that the use of deadly force is not justifiable to prevent commission of any felony. In *Mammano v. State*, 1958 OK CR 94, 333 P.2d 602, the deceased grabbed the defendant's hands and placed them on his private parts. The defendant killed the deceased and pleaded subsection 1 in justification. The court held that the acts of the deceased alone did not justify the homicide because the acts of the deceased did not involve imminent danger of death or great bodily harm to the defendant. The conviction was affirmed. The *Mammano* case, therefore, places a limitation on the "any felony" language of subsection 1. Only those felonies which involve danger of imminent death or great bodily harm may be defended against by the use of deadly force.

Subsection 3 of section 733 also contains the language, "in lawfully suppressing any riot; or in lawfully keeping and preserving the peace." Research has shown only one case that has invoked the "preserving the peace" language, and no cases that have invoked the "suppressing any riot" language as justification for the use of deadly force. *Fleming v. State*, 1965 OK CR 53, 401 P.2d 997. In *Fleming*, the defendant had been asked by a neighbor to come to her house to help her stop a fight that had developed between her husband and a friend. When the defendant attempted to stop the fight, the friend began fighting with the defendant and attacked the defendant with a knife. The defendant killed the friend. The Court of Criminal Appeals reversed the conviction for first-degree manslaughter because the trial court failed to instruct on subdivision 3 of section 733. The Commission considered it significant, however, that the defendant in *Fleming* had been attacked by the decedent, who was wielding a knife. Hence, the defendant had a right of self-defense. The Commission is therefore of the opinion that a homicide is "necessarily committed" when preserving the peace only in those situations in which the peacemaker is in imminent danger of death or great bodily harm, i.e., only in those situations in which the peacemaker has a defense of self-defense. Similarly, the Commission has concluded that use of deadly force is justifiable when suppressing a riot only in those situations in which the defense of self-defense is applicable.

OUJI-CR 8-46  
(2017 SUPP.)



INSTRUCTION No. \_\_\_\_\_

A person is justified in using deadly force in self-defense if that person believed that use of deadly force was necessary to protect herself from imminent danger of death or great bodily harm. Self-defense is a defense although the danger to life or personal security may not have been real, if a person, in the circumstances and from the viewpoint of the defendant, would reasonably have believed that she was in imminent danger of death or great bodily harm.

OUII-CR 8-47

INSTRUCTION No. \_\_\_\_\_

A person is justified in using force in self-defense if that person reasonably believed that use of force was necessary to protect **himself/herself** from imminent danger of bodily harm. Self-defense is a defense although the danger to personal security may not have been real, if a reasonable person, in the circumstances and from the viewpoint of the defendant, would reasonably have believed that he/she was in imminent danger of bodily harm. The amount of force used may not exceed the amount of force a reasonable person, in the circumstances and from the viewpoint of the defendant, would have used to prevent the bodily harm.

OUII-CR 8-48

INSTRUCTION No. \_\_\_\_\_

It is the burden of the State to prove beyond a reasonable doubt that the defendant was not acting in self-defense. If you find that the State has failed to sustain that burden, then the defendant must be found not guilty.

OUJI-CR 8-49

INSTRUCTION No. \_\_\_\_\_

Self-defense is permitted a person solely because of necessity. Self-defense is not available to a person who **(was the aggressor)/(provoked another with the intent to cause the altercation)/(voluntarily entered into mutual combat)**, no matter how great the danger to personal security became during the altercation unless the right of self-defense is reestablished.

OUJI-CR 8-50

A person who **(was the original aggressor)/(provoked another with intent to cause the altercation)/(voluntarily entered into mutual combat)** may regain the right to self-defense if that person withdrew or attempted to withdraw from the altercation and communicated **his/her** desire to withdraw to the other **participant(s)** in the altercation. If, thereafter, the other **participant(s)** continued the altercation, the other **participant(s)** became the **aggressor(s)** and the person who **(was the original aggressor)/(provoked another with the intent to cause the altercation)/(voluntarily entered into mutual combat)** is entitled to the defense of self-defense.

OUII-CR 8-51

INSTRUCTION No. \_\_\_\_\_

A person who **(was not the aggressor)/(did not provoke another with intent to cause an altercation)/(did not voluntarily enter into mutual combat)** has no duty to retreat, but may stand firm and use the right of self-defense.

OUJI-CR 8-52

INSTRUCTION No. \_\_\_\_\_

A person is an aggressor when that person by **his/her** wrongful acts provokes, brings about, or continues an altercation. **[The use of words alone cannot make a person an aggressor.]**

OUJI-CR 8-53

INSTRUCTION No. \_\_\_\_\_

The defense of self-defense is available to a person who was a trespasser only if the trespasser availed or attempted to avail **himself/herself** of a reasonable means of retreat from the imminent danger of **(death or great bodily harm)/(bodily harm)** **before repelling/(attempting to repel)** an unlawful attack.

OUJI-CR 8-54



A person is a trespasser if that person has **([entered without consent]/[is unlawfully] upon the land of another)/(refused to leave the land of another after a lawful request to leave has been made to him/her).**

OUJI-CR 8-55

Altercation - Heated dispute or controversy.

Reference: Black's Law Dictionary 71 (5th ed. 1979).

Imminent danger - Danger that is pressing, urgent, or immediate.

References: Lary v. State, 50 Okl. Cr. 111, 296 P. 512 (1931); Turner v. State, 4 Okl. Cr. 164, 111 P. 988, 998 (1910); R. Perkins, Criminal Law 994 (2d ed. 1969).

Mutual combat - A fight between two or more parties into which each party has entered willingly.

References: Phelps v. State, 64 Okl. Cr. 240, 78 P.2d 1068 (1938); Weatherholt v. State, 9 Okl. Cr. 161, 131 P. 185 (1913); 27A Words and Phrases 712.

OUII-CR 8-56

INSTRUCTION No. \_\_\_\_\_

Evidence has been introduced in this case that the defendant was at another and different place at the time of the commission of the crime charged. The law is that such a defense is proper and legitimate and you should consider all of the evidence bearing thereon, whether introduced by the State or the defendant, and if, after careful consideration of all of the evidence in the case, you have a reasonable doubt as to whether the defendant was present at the time and place where the crime was committed, if it was committed, then you must find the defendant not guilty.

OUJI-CR 8-57

A person who enters a dwelling with the consent or authorization of an owner or occupant of that dwelling does not commit a "breaking" and therefore cannot be convicted of burglary **(in the first/second degree)/(with explosives)**. Such consent or authorization to enter is adequate where it is given by one who has actual authority to give it or by one who reasonably appears to have such authority.

It is the burden of the State to prove beyond a reasonable doubt that the defendant did not enter with the consent or authorization of an owner or occupant or one who reasonably appeared to have such authority. If you find that the State has failed to sustain that burden, then the defendant must be found not guilty.

OUII-CR 8-58

The defendant has raised the defense of consent. It is the burden of the State to prove beyond a reasonable doubt that there was no consent to the **kidnapping/confining** of the other person. Consent of the other person shall not be a defense if **(consent was obtained by threat or duress)/(the other person was twelve years of age or younger)**. If you find that the State has failed to sustain its burden of proof beyond a reasonable doubt, then the defendant must be found not guilty.

OUII-CR 8-59  
(2013 Supp.)

The defendant has raised the defense that **he/she** was a victim of human trafficking during the time of the alleged offense. It is the burden of the State to prove beyond a reasonable doubt that the defendant was not a victim of human trafficking during the time of the alleged offense. If you find that the State has failed to satisfy its burden of proof beyond a reasonable doubt, then the defendant must be found not guilty.

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Statutory Authority: 21 O.S. Supp. 2016, § 748(D).

This instruction should be given where the evidence presented at trial sufficiently raises the defense that the defendant was a victim of human trafficking at the time of the alleged offense.

OUII-CR 8-61  
(2017 Supp.)

INSTRUCTION No. \_\_\_\_\_

You should consider only the evidence introduced while the court is in session. You are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified when considered with the aid of the knowledge which you each possess in common with other persons. You may make deductions and reach conclusions which reason and common sense lead you to draw from the fact which you find to have been established by the testimony and evidence in the case.

OUII-CR 9-1

"Direct evidence" is the testimony of a person who asserts actual, personal knowledge of a fact, such as the testimony of an eyewitness. "Direct evidence" may also be an exhibit such as a photograph which demonstrates the existence of a fact. It is proof which points immediately to a question at issue and which proves the existence of a fact without inference or presumption.

OUII-CR 9-2



"Circumstantial evidence" is the proof of facts or circumstances which gives rise to a reasonable inference of other connected facts that tend to show the guilt or innocence of a defendant. It is proof of a chain of facts and circumstances that indicates either guilt or innocence.

OUJI-CR 9-3

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should consider circumstantial evidence together with all the other evidence in the case in arriving at your verdict.

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OUJI-CR 9-4  
(2013 Supp.)

INSTRUCTION No. \_\_\_\_\_

The State relies **[in part]** for a conviction upon circumstantial evidence. In order to warrant conviction of a crime upon circumstantial evidence, each fact necessary to prove the guilt of the defendant must be established by the evidence beyond a reasonable doubt. All of the facts and circumstances, taken together, must establish to your satisfaction the guilt of the defendant beyond a reasonable doubt.

OUII-CR 9-5

You must give separate consideration to the case of each individual defendant. Each defendant is entitled to have **his/her** case decided on the basis of the evidence and the law which is applicable to **him/her**. The fact that you return a verdict of guilty or not guilty for one defendant should not, in any way, affect your verdict for the other defendant.

**[Repeat Limiting Instructions, If Any, Given During the Trial.]**

OUII-CR 9-6

INSTRUCTION No. \_\_\_\_\_

You must give separate consideration for each charge in the case. The defendant is entitled to have **his/her** case decided on the basis of the evidence and the law which is applicable to each charge. The fact that you return a verdict of guilty or not guilty for one charge should not, in any way, affect your verdict for any other charge.

This Instruction should be given if two or more charges against the same defendant are tried together. This Instruction is not required unless any party has made a timely request for it. *See Taylor v. State*, 2011 OK CR 8, ¶¶ 14-18, 248 P.3d 362,

This instruction is similar to the one given in *Smith v. State*, 2007 OK CR 16, ¶ 38, 157 P.3d 1155, 1168-69.

OUJI-CR 9-6A  
(2014 Supp.)

INSTRUCTION No. \_\_\_\_\_

Another person, **[Name of Co-Defendant]**, has been charged in this case along with **[Name of Defendant]**. **[Name of Co-Defendant]** is not on trial at this time and that fact should not concern you when you are deciding this defendant's case. A defendant is entitled to separate consideration of **his/her** case.

OUJI-CR 9-7

Evidence has been introduced of the defendant's **departure/concealment/(escape or attempt to escape from custody)** shortly after the alleged crime was committed. You must first determine whether this action by the defendant constituted flight.

The term "flight," as it is used in this instruction, means more than departure or concealment. To be in flight, a defendant must have **departed/(concealed himself/ herself)/(escaped or attempted to escape from custody)** with a consciousness of guilt in order to avoid arrest.

The defendant has offered evidence explaining **his/her** acts. You must consider the claim of the defendant in determining if flight occurred.

To find that the defendant was in flight you must find beyond a reasonable doubt that:

First, the defendant **departed/(concealed himself/herself)/(escaped or attempted to escape from custody)**,

Second, with a consciousness of guilt,

Third, in order to avoid arrest for the crime with which **he/she** is charged.

If after a consideration of all the evidence on this issue, you find beyond a reasonable doubt that the defendant was in flight, then this flight is a circumstance which you may consider with all the other evidence in this case in determining the question of the defendant's guilt. However, if you have a reasonable doubt that defendant was in flight, then the fact of any **departure/concealment/(escape or attempt to escape from custody)** is not a circumstance for you to consider.

OUII-CR 9-8

INSTRUCTION No. \_\_\_\_\_

Evidence has been received that the defendant has allegedly committed **misconduct/offenses/(an offense)** other than that charged in the information. You may not consider this evidence as proof of the guilt or innocence of the defendant of the specific offense charged in the **information/indictment**. This evidence has been received solely on the issue of the defendant's alleged **motive/opportunity/intent/ preparation/(common scheme or plan)/knowledge/identity/(absence of mistake or accident)**. This evidence is to be considered by you only for the limited purpose for which it was received.

OUJI-CR 9-9  
(2000 Supp.)



INSTRUCTION No. \_\_\_\_\_

The defendant has introduced evidence of **his/her** character for **(truth and veracity)/morality/chastity/honesty/integrity/(being a peaceful and law-abiding citizen)**. This evidence may be sufficient when considered with the other evidence in the case to raise a reasonable doubt of the defendant's guilt. However, if from all the evidence in the case you are satisfied beyond a reasonable doubt of the defendant's guilt, then you may find **him/her** guilty, even though he/she may have a good character.

OUJI-CR 9-10  
(2000 Supp.)

You have heard evidence that the defendant may have committed **another/other offenses(s)** of **(sexual assault)/(child molestation)** in addition to the **offense(s)** for which **he/she** is now on trial. You may consider this evidence for its bearing on any matter to which it is relevant along with all of the other evidence and give this evidence the weight, if any, you deem appropriate in reaching your verdict. You may not, however, convict the defendant solely because you believe **he/she** committed **this/these** other **offense(s)** or solely because you believe **he/she** has a tendency to engage in acts of **(sexual assault)/(child molestation)**. The prosecution's burden of proof to establish the defendant's guilt beyond a reasonable doubt remains as to each and every element of **each/the** offense charged.

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Statutory Authority: 12 O.S. Supp. 2010, §§ 2413, 2414.

OUII-CR 9-10A  
(2010 Supp.)

INSTRUCTION No. \_\_\_\_\_

Evidence has been introduced for the purpose of showing the character of the deceased to be that of a quarrelsome, dangerous person. You may consider that fact in connection with the other evidence in ascertaining whether or not the deceased was the aggressor and brought on the difficulty, and if you believe that **he/she** had such a character and that **his/her** reputation in this regard was known to the defendant, you may consider that fact in connection with all the other evidence in the case in ascertaining whether or not the defendant reasonably and in good faith believed that **he/she** was in danger of losing **his/her** life or of receiving great bodily injury at the hands of the deceased.

OUII-CR 9-11

Evidence has been introduced in this case that the defendant made a statement to **[Name of Witness]** at **[Location]** on **[Date]**. Evidence relating to an alleged statement by a defendant outside of court and after a crime has been committed may be considered by you, but only with great caution and only if you determine that it was made and it was made voluntarily. Unless you are convinced beyond a reasonable doubt that the statement was voluntary, you should disregard it entirely.

To determine whether the defendant's statement was voluntary, you should consider all the circumstances surrounding it, including the age, education level, physical and mental condition of the defendant, and **(his/her treatment [while in custody]/[under interrogation])/(whether he/she was promised any benefit)** as shown by the other evidence in this case. A statement is voluntary when made by a person exercising his or her free will. A statement made against a person's will in response to force, threat, or promise is not voluntary.

If after considering the evidence you determine that the statement was made by the defendant and was voluntary, you may give it whatever weight you feel it deserves.

OUII-CR 9-12

**[Should you find that a confession was made by the defendant and was made freely and voluntarily and in compliance with the rules of law set forth above, then you are instructed:]** A confession alone does not justify a conviction unless it is corroborated, that is confirmed and supported by other evidence of the material and basic fact or facts necessary for the commission of the offense charged.

Unless you find that the confession, if made, is corroborated, you must disregard it.

OUII-CR 9-13

No person may be convicted of **(murder/manslaughter in the first/second degree)/(negligent homicide)** unless both the fact of the death of the person allegedly killed and the fact that **his/her** death was caused by the conduct of another person are established as independent facts and beyond a reasonable doubt.

OUJI-CR 9-14

INSTRUCTION No. \_\_\_\_\_

An exculpatory statement is defined as a statement by the defendant that tends to clear a defendant from alleged guilt, or a statement that tends to justify or excuse **his/her** actions or presence.

Where the State introduces in connection with a confession or admission of a defendant an exculpatory statement which, if true, would entitle **him/her** to an acquittal, **he/she** must be acquitted unless such exculpatory statement has been disproved or shown to be false by other evidence in the case. The falsity of an exculpatory statement may be shown by circumstantial as well as by direct evidence.

A statement is exculpatory within the meaning of this instruction only if it concerns a tangible, affirmative, factual matter capable of specific disproof. A statement is not exculpatory within the meaning of this instruction if it merely restates the defendant's contention of innocence.

OUII-CR 9-15

INSTRUCTION No. \_\_\_\_\_

**(A confession)/(An admission)** may not be considered by you against any defendant other than the person who made the **confession/admission**.

OUJI-CR 9-16



OUJI-CR 9-17

OUJI-CR 9-18

The State must prove the identity of the defendant as the person who committed the crime charged beyond a reasonable doubt. If after examining all of the evidence, you have a reasonable doubt as to whether the defendant was the individual who committed the crime charged, you must find the defendant not guilty.

Eyewitness identifications are to be scrutinized with extreme care. Testimony as to identity is a statement of a belief by a witness. The possibility of human error or mistake and the probable likeness or similarity of objects and persons are circumstances that you must consider in weighing identification testimony. You should carefully consider the factors that bear upon the weight that you give to the identification testimony, such as: (1) whether the witness had an adequate opportunity to observe the subject clearly; (2) whether the witness is positive in the identification; (3) whether the witness's identification is weakened by a prior failure to identify the subject; (4) whether the witness's testimony remained positive and unqualified after cross-examination; and (5) whether the witness' prior **description/identification** of the **person/thing** was accurate.

In deciding whether the witness had an adequate opportunity to observe the subject of the identification, you should consider the capability of the witness, the length of time of observation, the distance between the witness and the subject, lighting conditions, whether the witness was under stress, whether the witness had seen or known the subject before, and any other circumstance supported by the evidence.

In deciding how much weight to give to identification testimony, you should consider whether the identification was based on the witness's own recollection and the circumstances of the identification. These circumstances may include, but are not limited to, whether the identification was made by selecting the subject from a group of similar persons or the subject alone, the length of time between when the witness observed the subject and the identification, and whether anything during that time may have affected the identification. You should also consider whether the witness described the subject before the identification, and if so, how specific the description was.

OUII-CR 9-19  
(2016 SUPP.)

Evidence has been presented that on some prior occasion **(the defendant)/ ([Name of Witness]) (made a statement)/(acted in a manner)** inconsistent with **his/ her** testimony in this case. This evidence is called impeachment evidence and it is offered to show that the **defendant's/witness's** testimony is not believable or truthful. If you find that **(a statement was made)/(the acts occurred)**, you may consider this impeachment evidence in determining what weight and credit to give the testimony of **(the defendant)/(that witness)**. You may not consider this impeachment evidence as proof of innocence or guilt. You may consider this impeachment evidence only to the extent that you determine it affects the believability of the **defendant/witness**, if at all.

[However, if you find the statements of **(the defendant)/ ([Name of Witness])** were made **[Specify When, Where, and To Whom the Statements Were Made]**, the statements may also be considered as proof of innocence or guilt.]

OUJI-CR 9-20

Evidence has been presented that **(the defendant)/([Name of Witness])** has committed conduct that may affect **his/her** credibility. This evidence is called impeachment evidence, and it is offered to show that the **defendant's/witness's** testimony is not believable or truthful. If you find that this conduct occurred, you may consider this impeachment evidence in determining what weight and credit to give the credibility of **(the defendant)/([Name of Witness])**. You may not consider this impeachment evidence as proof of innocence or guilt. You may consider this impeachment evidence only to the extent that you determine it affects the believability of the **defendant/witness**, if at all.

OUII-CR 9-21  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

Evidence has been presented that **[Name of Witness]** has heretofore been convicted of **(a criminal offense)/(criminal offenses)**. This evidence is called impeachment evidence, and it is offered to show that the witness's testimony is not believable or truthful. If you find that **(this conviction)/(these convictions)** occurred, you may consider this impeachment evidence in determining what weight and credit to give the credibility of that witness. You may not consider this impeachment evidence as proof of innocence or guilt of the defendant. You may consider this impeachment evidence only to the extent that you determine it affects the believability of the witness, if at all.

OUJI-CR 9-22  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

Evidence has been presented that the defendant has heretofore been convicted of **(another offense)/(other offenses)** distinct from that charged in the information. This evidence is called impeachment evidence, and it is offered to show that the defendant's testimony is not believable or truthful. If you find that **(this conviction)/(these convictions)** occurred, you may consider this impeachment evidence in determining what weight and credit to give the credibility of the defendant. You may not consider this impeachment evidence as proof of innocence or guilt. You may consider this impeachment evidence only to the extent that you determine it affects the believability of the defendant, if at all. A person may not be convicted of the commission of one offense by any proof tending to show that **he/she** may have committed another offense.

OUII-CR 9-23  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

An attorney has the right to interview **his/her** witnesses for the purpose of learning the testimony the witness will give. The fact that the witness has talked to an attorney and told the attorney what **he/she** would testify to does not, by itself, reflect adversely on the truth of the testimony of the witness.

OUJI-CR 9-24  
(2000 Supp.)



INSTRUCTION No. \_\_\_\_\_

No person may be convicted on the testimony of an accomplice unless the testimony of such a witness is corroborated by other evidence.

OUJI-CR 9-25  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

An "accomplice" is one who, with criminal intent, is involved with others in the commission of a crime. A person becomes an accomplice either by being present and participating in a crime or, regardless of whether **he/she** is present during the commission of a crime, by aiding and abetting before or during its commission, or by having advised or encouraged its commission.

OUII-CR 9-26  
(2000 Supp.)

"Corroborating evidence" is supplementary evidence which tends to connect the defendant with the commission of the crime charged.

OUJI-CR 9-27  
(2000 Supp.)

Evidence corroborative of the testimony of an accomplice need not directly connect the defendant with the commission of the crime. It is sufficient if it tends to connect the defendant with its commission. This corroborating evidence, however, must show more than the mere commission of the offense or the circumstances thereof. Such evidence need not be direct, but may be entirely circumstantial.

It is not essential that the corroborating evidence, if any, cover every material point testified to by the accomplice, or that it be sufficient, standing alone, to establish the fact of the commission of the crime charged. It is sufficient corroboration if you, in your discretion, find from the evidence, beyond a reasonable doubt, that the testimony of the accomplice is corroborated as to some material fact or facts by independent evidence tending to connect the defendant with the commission of the crime. If the testimony of an accomplice is so corroborated, you shall give **his/her** testimony such weight and credit as you find it is entitled to receive.

OUJI-CR 9-28  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

As to the witness, **[Name of Witness]**, you are instructed that you are to determine whether or not **he/she** is an accomplice to the crime of which the defendant here stands charged. If you determine that **he/she** is an accomplice, you cannot convict the defendant upon the testimony of **[Name of Witness]**, unless you find that **his/her** testimony is corroborated as provided in these instructions.

OUII-CR 9-29  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

You are instructed that the witness, **[Name of Witness]**, is what is termed in law as an accomplice to the crime of **(which the defendant stands charged)/(Specify Crime)**. For that reason you cannot convict the defendant upon the testimony of **[Name of Witness]** unless you find that **his/her** testimony is corroborated as required in these instructions.

OUJI-CR 9-30  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

One accomplice cannot corroborate the testimony of another accomplice so as to authorize conviction on the testimony of two or more accomplices alone.

OUJI-CR 9-31  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

In determining the question as to whether or not the testimony of an accomplice has been corroborated, you must first set aside **his/her** testimony entirely and then examine all of the remaining testimony, evidence, facts, and circumstances, and ascertain from such examination whether there is any evidence tending to show the commission of the offense charged and tending to connect the defendant with the offense. If there is, then the testimony of the accomplice is corroborated.

OUII-CR 9-32



In *Pink v. State*, 2004 OK CR 37, ¶ 28, 104 P.3d 584 , 593, the Oklahoma Court of Criminal Appeals decided that the independent corroboration requirement for accomplice testimony does not apply to coconspirator testimony, and it directed that this instruction as well as OUJI-CR 9-35 through 9-39 were erroneous and should not be used. Independent corroboration is still required, however, if the alleged coconspirator's testimony was the testimony of an accomplice. For the instruction for corroboration of accomplice testimony, see OUJI-CR 9-32, *supra*. The Court also ruled that OUJI-CR 9-34 was unnecessary.

OUJI-CR 9-33  
(2008 Supp.)

INSTRUCTION No. \_\_\_\_\_

OUJI-CR 9-34  
(2008 Supp.)

INSTRUCTION No. \_\_\_\_\_

OUJI-CR 9-35  
(2008 Supp.)

INSTRUCTION No. \_\_\_\_\_

OUJI-CR 9-36  
(2008 Supp.)

INSTRUCTION No. \_\_\_\_\_

OUJI-CR 9-37  
(2008 Supp.)

INSTRUCTION No. \_\_\_\_\_

OUJI-CR 9-38  
(2008 Supp.)

INSTRUCTION No. \_\_\_\_\_

OUJI-CR 9-39  
(2008 Supp.)

INSTRUCTION No. \_\_\_\_\_

OUJI-CR 9-40  
(2000 Supp.)



INSTRUCTION No. \_\_\_\_\_

A defendant who wishes to testify is a competent witness. The defendant's testimony is to be judged in the same way as that of any other witness.

OUII-CR 9-41  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

Testimony has been introduced of certain witnesses who purport to be skilled in their line of endeavor or who possess peculiar knowledge acquired by study, observation, and practice.

You may consider the testimony of these witnesses, and give it such weight and value as you think it should have, but the weight and value to be given their testimony is for you to determine. You are not required to surrender your own judgment to that of any person testifying, based on that person's education, training or experience. You need not give controlling effect to the opinion of such witnesses for their testimony, like that of any other witness, is to be received by you and given such weight and value as you deem it is entitled to receive.

OUII-CR 9-42  
(2000 Supp.)

In addition to testimony from **[Name(s) of Opinion Witness(es)]** as to **his/her/their opinion(s)**, you have also heard **his/her/their** testimony as to information **he/she/they** relied upon in reaching **his/her/their conclusion(s)**. This testimony was admitted solely to enable you to evaluate **his/her/their** opinion testimony, and you should not consider it for any other purpose in reaching a verdict.

OUII-CR 9-42A  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

The testimony of an informer who provides evidence against a defendant for **pay/(immunity from punishment)/(personal advantage/ vindication)** must be examined and weighed by you with greater care than the testimony of an ordinary witness. Whether the informer's testimony has been affected by interest or by prejudice against the defendant is for you to determine.

OUJI-CR 9-43  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

The testimony of an informant who provides evidence against a defendant must be examined and weighed by you with greater care than the testimony of an ordinary witness. Whether the informant's testimony has been affected by interest or prejudice against the defendant is for you to determine. In making that determination, you should consider:

OUJI-CR 9-43A  
(2016 SUPP.)

INSTRUCTION No. \_\_\_\_\_

The defendant is not compelled to testify, and the fact that a defendant does not testify cannot be used as an inference of guilt and should not prejudice **him/her** in any way. You must not permit that fact to weigh in the slightest degree against the defendant, nor should this fact enter into your discussions or deliberations in any manner.

OUJI-CR 9-44  
(2000 Supp.)

The prosecution has introduced what is known as victim impact evidence. This evidence has been introduced to show the financial, emotional, psychological, or physical effects of the victim's death on the members of the victim's immediate family. This evidence is simply another method of informing you about the specific harm caused by the crime in question. You may consider this evidence in determining an appropriate punishment. However, your consideration must be limited to a moral inquiry into the culpability of the defendant, not an emotional response to the evidence.

As it relates to the death penalty: Victim impact evidence is not the same as an aggravating circumstance. Proof of an adverse impact on the victim's family is not proof of an aggravating circumstance. Introduction of this victim impact evidence in no way relieves the State of its burden to prove beyond a reasonable doubt at least one aggravating circumstance which has been alleged. You may consider this victim impact evidence in determining the appropriateness of the death penalty only if you first find that the existence of one or more aggravating circumstance has been proven beyond a reasonable doubt by evidence independent from the victim impact evidence, and find that the aggravating circumstance(s) found outweigh the finding of one or more mitigating circumstances.

As it relates to the other sentencing options: You may consider this victim impact evidence in determining the appropriate punishment as warranted under the law and facts in the case.

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Statutory Authority: 21 O.S. 2016, § 710.10(C).

The Court of Criminal Appeals held in *Cooper v. State*, 1997 OK CR 22, ¶¶ 3-4, 894 P.2d 420, 422, that it was improper for the trial court to order a second stage for the sole purpose of presenting victim impact evidence to the jury before the jury recommended a sentence. 21 O.S. 2011, § 142A-8 authorizes victim impact statements to be presented "at the sentence proceeding". Separate sentencing proceedings should not be conducted before a jury, except in cases where the death penalty is sought and in bifurcated proceedings for enhanced sentencing after former conviction of a felony. The Court of Criminal Appeals has not ruled on whether victim impact statements are admissible in a bifurcated proceeding for enhanced sentencing after former conviction of a felony. Accordingly, the Committee has not prepared a jury instruction for such cases.

OUII-CR 9-45  
(2017 Supp.)

The **State/defendant** is about to present evidence in the form of a **video/computer animation/[other]**, which is intended to help illustrate certain testimony or evidence being presented to you. The exhibit being presented is not an actual recording or video of the event that is shown. Rather, the exhibit is offered simply as a "reenactment." The exhibit is intended to help you better understand the **State's/defendant's** position about how an event occurred (or did not occur) and that party's understanding of the evidence supporting this interpretation. The exhibit is intended to assist you in your role as jurors, and like all evidence, it may be accepted or rejected by you, in whole or in part.

OUII-CR 9-46



Evidence has been introduced of the defendant's refusal to take a test to determine the blood alcohol level in **his/her** body at the time of **his/her** arrest. You must first determine whether this refusal is evidence of guilt.

To find that the defendant's refusal to take the blood alcohol test is evidence of guilt, you must find beyond a reasonable doubt that:

First, the defendant refused the test,

Second, with a consciousness of guilt,

Third, in order to avoid arrest or conviction for the crime with which **he/she** is now charged.

[Note: If the defendant has offered evidence explaining the refusal, give the following: The defendant has offered evidence explaining **his/her** refusal to take the blood alcohol test. You must consider this explanation in determining whether the defendant's refusal is evidence of guilt.]

If after a consideration of all the evidence on this issue, you find beyond a reasonable doubt that the defendant refused the blood alcohol test with a consciousness of guilt in order to avoid arrest or conviction, then the defendant's refusal to take the blood alcohol test is a circumstance which you may consider with all the other evidence in this case in determining the question of the defendant's guilt. However, if you have a reasonable doubt that the defendant refused the blood alcohol test with a consciousness of guilt in order to avoid arrest or conviction, then the defendant's refusal to take the blood alcohol test is not a circumstance for you to consider.

OUII-CR 9-47  
(2008 Supp.)

INSTRUCTION No. \_\_\_\_\_

Since all the evidence in this case has been given to you, it is now my duty, under the law, to give you the instructions that apply in this trial. The instructions contain all rules of the law that are to be applied by you in this case, and all the rules of law by which you are to weigh the evidence and determine the facts in issue in deciding this case and in reaching a verdict. You must consider the instructions as a whole and not as a part to the exclusion of the rest. All the testimony and evidence which it is proper for you to consider has been introduced in this case. You should not consider any matter of fact or of law except what has been given to you while this court is or has been in session.

OUII-CR 10-1  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

It is your responsibility as jurors to determine the facts from the evidence, to follow the rules of law as stated in these instructions, to reach a fair and impartial verdict of guilty or not guilty based upon the evidence[, and to determine punishment if you should find the defendant guilty] pursuant to your instructions. You must not use any method of chance in arriving at a verdict, but must base your verdict on the judgment of each juror.

The bracketed language should be used only in non-bifurcated trials and should be deleted if there are separate stages for the jury to determine guilt and punishment. *See Myers v. State*, 2006 OK CR 12, ¶ 66, 133 P.3d 312.

OUII-CR 10-2

INSTRUCTION No. \_\_\_\_\_

The defendant, **[Name of Defendant]**, is charged in the **information/indictment** with **[State Crime Charged and Summarize Material Facts of Information or Indictment]** on or about **[Date]** in **[County]** County, Oklahoma.

To this charge the defendant has entered a plea of not guilty.

OUJI-CR 10-3  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

**[The/Each]** defendant is presumed innocent of the crime charged, and the presumption continues unless, after consideration of all the evidence, you are convinced of **his/her/(each defendant's)** guilt beyond a reasonable doubt. The State has the burden of presenting the evidence that establishes guilt beyond a reasonable doubt.

The defendant must be found not guilty unless the State produces evidence which convinces you beyond a reasonable doubt of each element of the crime.

OUII-CR 10-4  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

Evidence is the testimony received from the witnesses under oath, stipulations made by the attorneys, and the exhibits admitted into evidence during the trial.

OUJI-CR 10-5  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

The **information/indictment** in this case is the formal method of accusing the defendant of a crime. The information is not evidence of guilt, and the law is that you should not allow yourselves to be influenced against the defendant by reason of the filing of the **information/indictment**.

OUJI-CR 10-6  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

The Court has made rulings in the conduct of the trial and the admission of evidence. In so doing I have not expressed nor intimated in any way the weight or credit to be given any evidence or testimony admitted during the trial. Nor have I indicated in any way the conclusions to be reached by you in this case.

OUJI-CR 10-7  
(2000 Supp.)



INSTRUCTION No. \_\_\_\_\_

It is your responsibility to determine the credibility of each witness and the weight to be given the testimony of each witness. In determining such weight or credibility, you may properly consider: the interest, if any, which the witness may have in the result of the trial; the relation of the witness to the parties; the bias or prejudice of the witness, if any has been apparent; the candor, fairness, intelligence, and demeanor of the witness; the ability of the witness to remember and relate past occurrences, the means of observation, and the opportunity of knowing the matters about which the witness has testified. From all the facts and circumstances appearing in evidence and coming to your observation during the trial, aided by the knowledge which you each possess in common with other persons, you will reach your conclusions. You should not let sympathy, sentiment or prejudice enter into your deliberations, but should discharge your duties as jurors impartially, conscientiously, and faithfully under your oaths and return such verdict as the evidence warrants when measured by these instructions.

OUII-CR 10-8  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

You have been permitted to take notes during the testimony of this case. If you have done so you may refer to them during deliberations, and discuss the contents of your notes with other jurors. In your deliberations, give no more or no less weight to the views of a fellow juror just because that juror did or did not take notes. Your notes are not official transcripts, but are simply aids to your memory. It is the testimony from the witness stand which must be the basis of your determination of the facts, and ultimately, your verdict in the case.

OUJI-CR 10-8A  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

From time to time during this trial, the attorneys have made objections that I have ruled on. You should not speculate upon the reasons why objections were made. If I approved or sustained an objection, you should not speculate on what might have been said or what might have occurred had the objection not been sustained by me.

OUJI-CR 10-9  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

After you have retired to consider your verdict, select one of your number as foreperson and enter upon your deliberations. [If you have questions during your deliberations, you may submit them to the bailiff, and I will attempt to answer them as fully as the law permits.] When you have agreed on a verdict, your foreperson alone will sign it, and you will, as a body, return it in open court. Your verdict must be unanimous. Forms of verdict will be furnished. You will now listen to the argument of counsel, which is a proper part of this trial.

This instruction (or one of the alternatives in OUJI-CR 10-10A or 10-10B below) should be the last instruction to be given. The trial court is not required to give the second sentence of the instruction, which is in brackets.

In *Cohee v. State*, 1997 OK CR 30, Attachment 1, 942 P.2d 211, 215 the Court of Criminal Appeals approved guidelines for trial courts when conducting jury trials in criminal cases. The guidelines included: "The trial court may instruct the jury that it may submit questions to the court during deliberations, and that the court will attempt to answer those questions as fully as the law permits."

OUJI-CR 10-10  
(2003 Supp.)

INSTRUCTION No. \_\_\_\_\_

After you have retired to consider your verdict, select one of your number as foreperson and enter upon your deliberations. Your verdict does not need to be unanimous, and it can be based on an agreed verdict of five (5) of you.

If your verdict is unanimous, your foreperson alone will sign it. If your verdict is not unanimous, it must be signed by each juror who concurs in the verdict. After you have reached your verdict, you will, as a body, return it in open court. Forms of verdict will be furnished. You will now listen to the argument of counsel, which is a proper part of this trial.

OUII-CR 10-10A  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

After you have retired to consider your verdict, select one of your number as foreperson and enter upon your deliberations. Your verdict must be unanimous for the **crime(s)** of **[Specify Crime(s) That Are Punishable by Imprisonment for More Than Six Months]** in **[Specify Count(s)]**. Your verdict does not need to be unanimous for the **crime(s)** of **[Specify Crime(s) That Are Punishable by Six Months Imprisonment or Less]** in **[Specify Count(s)]**, and it can be based on an agreed verdict of **(five (5))/(nine (9))** of you.

If your verdict is unanimous, your foreperson alone will sign it. If your verdict is not unanimous, it must be signed by each juror who concurs in the verdict. After you have reached your verdict, you will, as a body, return it in open court. Forms of verdict will be furnished. You will now listen to the argument of counsel, which is a proper part of this trial.

OUII-CR 10-10B  
(2000 Supp.)

This case has taken approximately [**Specify Number**] hours of trial time. You have deliberated for approximately [**Specify Number**] hours. You report to me that you are experiencing difficulty in arriving at a verdict.

This is an important case and a serious matter to all concerned. You are the exclusive judges of the facts; the court is the judge of the law. Now I most respectfully and earnestly request of you that you return to your jury room and resume your deliberations. Further open and frank discussion of the evidence and law submitted to you in this case may aid you in arriving at a verdict.

This does not mean that those favoring any particular position should surrender their honest convictions as to the weight or effect of any evidence solely because of the opinion of other jurors or because of the importance of arriving at a decision. No juror should ever agree to a verdict that is contrary to the law in the court's instructions, nor find a fact or concur in a verdict which in good conscience he or she believes to be untrue.

This does mean that you should give respectful consideration to each other's views and talk over any differences of opinion in the spirit of fairness and candor. If at all possible, you should resolve any differences and come to a common conclusion, that this case may be completed. Each juror should respect the opinion of his or her fellow jurors, as he or she would have them respect his or hers, in an earnest and diligent effort to arrive at a just verdict under the law and the evidence.

You may be as leisurely in your deliberations as the case may require and take all the time necessary. The giving of this instruction at this time in no way means that it is more important than any other instruction. On the contrary, you should consider this instruction together with and as part of the instructions which I previously gave you.

In stating the foregoing, I again repeat: you are the judges of the facts; the court is the judge of the law. In making all statements made to you I have not, nor do I now, express or intimate, nor indicate, in any way the conclusions to be reached by you in this case, nor do I intend in any way or manner to coerce a verdict, nor directly or indirectly to force a verdict in this case. I only ask that you return to your jury room and, again, diligently and earnestly under your oaths resume your deliberations.

OUJI-CR 10-11  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

You have now completed your duties as jurors in this case and are discharged. The question may arise whether you are free to discuss this case with anyone. This is entirely your decision. If any person tries to discuss the case over your objection, or becomes critical of your service, please report it to me immediately.

OUJI-CR 10-12  
(2000 Supp.)



If you find beyond a reasonable doubt that the defendant committed the crime of **[Crime Charged]**, you shall return a verdict of guilty by marking the Verdict Form **[for the crime of (Crime Charged)]** appropriately.

If you have a reasonable doubt of the defendant's guilt of the charge of **[Crime Charged]**, or you find that the State has failed to prove each element of **[Crime Charged]** beyond a reasonable doubt, you shall return a verdict of not guilty by marking the Verdict Form **[for the crime of (Crime Charged)]** appropriately.

If you find the defendant guilty, you shall then determine the proper punishment. The crime of **[Crime Charged]** is punishable by **[State Range of Punishment (including any mandatory fine)]**. **[You may also impose a fine of not exceeding one/ten thousand dollars (\$1,000/10,000).]** When you have decided on the proper punishment, you shall fill in the appropriate space on the Verdict Form **[for the crime of (Crime Charged)]** and return the verdict to the Court.

---

For any offense for which no fine is otherwise provided by law, the punishment may include a fine imposed under 21 O.S. 2011, § 64. *Daniels v. State*, 2016 OK CR 2, ¶ 5, 369 P.3d 381, 384; *Fite v. State*, 1993 OK CR 58, ¶¶ 8-11, 873 P.2d 293, 295. The Oklahoma Court of Criminal Appeals has provided an example of a proper instruction in *Daniels v. State*, as follows: "The crime of SHOOTING WITH INTENT TO KILL is punishable by imprisonment in the state penitentiary not exceeding life. In addition, you may also impose a fine not exceeding ten thousand (\$10,000.00) dollars." 2016 OK CR 2, ¶ 5, 369 P.3d 381, 384.

If there are multiple counts, this instruction should be repeated for each count, and the instruction should conclude with the statement: "You may find the defendant guilty of [one or both] [some or all] counts or not guilty of [one or both] [some or all] counts."

The Committee recommends individual Verdict Forms on separate sheets of paper for each Count. A Verdict Form to go with this instruction is provided in OUJI-CR 10-14, *infra*.

OUJI-CR 10-13  
(2018 Supp.)

A person convicted of [**Specify Crime in 21 O.S. Supp. 2019, § 13.1**] shall be required to serve not less than eighty-five percent (85%) of the sentence imposed before becoming eligible for consideration for parole and shall not be eligible for any credits that will reduce the length of imprisonment to less than eighty-five percent (85%) of the sentence imposed.

---

Statutory Authority: 21 O.S. 2011, § 12.1, 21 O.S. Supp. 2019, § 13.1

Because *Anderson* did not address the issue of the possibility of commutation of a sentence by the Governor upon a recommendation by a majority of the Pardon and Parole Board, in accordance with Okla. Const. Art. 6, § 10, this Instruction does not address this issue.

OUJI-CR 10-13A  
(2019 Supp.)

A person convicted of [**Specify Crime in 21 O.S. Supp. 2019, § 13.1**] shall be required to serve not less than eighty-five percent (85%) of the sentence imposed before becoming eligible for consideration for parole and shall not be eligible for any credits that will reduce the length of imprisonment to less than eighty-five percent (85%) of the sentence imposed.

If a person is sentenced to life imprisonment, the calculation of eligibility for parole is based upon a term of forty-five (45) years, so that a person would be eligible for consideration for parole after thirty-eight (38) years and three (3) months. However, if a person is not granted parole, he or she will be imprisoned for the remainder of his or her natural life while serving a sentence of life imprisonment.

OUII-CR 10-13B  
(2019 Supp.)

You are advised that **[if you recommend a sentence of imprisonment for two years or more,]** **[Name of Defendant]** shall be required to serve a term of post-imprisonment community supervision under conditions determined by the Department of Corrections, in addition to the actual imprisonment. Any term of post-imprisonment community supervision shall be for at least three years, and I will determine the actual term of post-imprisonment community supervision after your verdict. [If the sentence is life or life without the possibility of parole, there will be no postimprisonment community supervision.]

OUJI-CR 10-13C

THE STATE OF OKLAHOMA,

Plaintiff,

vs

JOHN DOE,

Defendant.

We, the jury, empaneled and sworn in the above-entitled cause, do, upon our oaths, find as follows:

Defendant is:

\_\_\_\_\_ Guilty and fix punishment at \_\_\_\_\_.

\_\_\_\_\_ Not Guilty.

\_\_\_\_\_  
FORE]

OUII-CR 10-14  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

If you find beyond a reasonable doubt that the defendant committed the crime of **[Crime Charged]**, you shall return a verdict of guilty by marking the Verdict Form appropriately. If you have a reasonable doubt of the defendant's guilt to the charge of **[Crime Charged]**, or if you find that the State has failed to prove each element of **[Crime Charged]** beyond a reasonable doubt, you shall return a verdict of not guilty by marking the Verdict Form appropriately. The issue of punishment is not before you at this time.

OUII-CR 10-15  
(2000 Supp.)

THE STATE OF OKLAHOMA,

Plaintiff,

vs

JOHN DOE,

Defendant.

We, the jury, empaneled and sworn in the above-entitled cause, do, upon our oaths, find as follows:

Defendant is:

\_\_\_\_\_ Guilty.

\_\_\_\_\_ Not Guilty.

\_\_\_\_\_  
FORE]

OUII-CR 10-16  
(2000 Supp.)

If you find beyond a reasonable doubt that the defendant committed the crime of **[Crime Charged]**, you shall return a verdict of guilty by marking the Verdict Form appropriately. If you have a reasonable doubt of the defendant's guilt to the charge of **[Crime Charged]**, or you find that the State has failed to prove each element of **[Crime Charged]** beyond a reasonable doubt, you shall return a verdict of not guilty by marking the Verdict Form appropriately.

The defendant has admitted that **he/she** has **[Specify Number]** previous **conviction(s)**. You may not consider **this/these** previous **conviction(s)** as proof of guilt in the case before you. You may consider the previous **conviction(s)** for the purpose of determining the punishment if you find that the defendant is guilty of the crime of **[Crime Charged]** in the present case.

The punishment for **[Crime Charged]** after **[Number]** previous **conviction(s)** is imprisonment in the custody of the Department of Corrections for a term of **[Specify Term Provided in 21 O.S. 2011 & Supp. 2019, § 51.1(A) or 51.1a]** years. When you have decided on the proper punishment, you should fill in the appropriate space on the verdict form and return the verdict to the Court.

---

Statutory Authority: 21 O.S. 2011 & Supp. 2019, §§ 51.1, 51.1a.

A Verdict Form to go with this instruction is provided in OUJI-CR 10-18, *infra*.

OUJI-CR 10-17  
(2019 Supp.)



THE STATE OF OKLAHOMA,

Plaintiff,

vs

JOHN DOE,

Defendant.

We, the jury, empaneled and sworn in the above-entitled cause, do, upon our oaths, find as follows:

Defendant is:

\_\_\_\_\_ Guilty and fix punishment at \_\_\_\_\_.

\_\_\_\_\_ Not Guilty.

\_\_\_\_\_  
FORE]

OUII-CR 10-18  
(2000 Supp.)

By your verdict in the first part of this trial you have already found the defendant guilty of the crime of **[Crime Charged]**. You must now determine the proper punishment.

The defendant has admitted that **he/she** has **[Specify Number]** previous **conviction(s)**. The punishment for **[Crime Charged]** after **[Specify Number]** previous **conviction(s)** is imprisonment in the custody of the Department of Corrections for a term of **[Specify Term Provided in 21 O.S. 2011 & Supp. 2019, § 51.1(A) or 51.1a]** years. When you have decided on the proper punishment, you should fill in the appropriate space on the verdict form and return the verdict to the Court.

---

Statutory Authority: 21 O.S. 2011 & Supp. 2019, §§ 51.1, 51.1a.

If there are multiple counts, the pattern for this instruction should be repeated for each count.

A Verdict Form for the second stage where the prior convictions have been stipulated to is provided OUJI-CR 10-20, *infra*.

OUJI-CR 10-19  
(2019 Supp.)

THE STATE OF OKLAHOMA,

Plaintiff,

vs

JOHN DOE,

Defendant.

We, the jury, empaneled and sworn in the above-entitled cause, do, upon our oaths, fix Defendant's punishment as follows:

\_\_\_\_\_ .

FOREI

OUII-CR 10-20

By your verdict in the first part of this trial you have already found the defendant guilty of the crime of **[Crime Charged]**. You must now determine the proper punishment.

The defendant has been charged with having previously been convicted of: **[List Prior Convictions]** The law presumes that the defendant has NOT been previously convicted as the State has charged. You may consider the previous **conviction(s)** only if the State has proved beyond a reasonable doubt:

1. The fact of the **conviction(s)**; and
2. That the defendant is the same person who was previously convicted.

The punishment for **[Crime Charged]** after 2 **[or more]** previous convictions is imprisonment in the State penitentiary for a term of **[Specify Term Provided in 21 O.S. Supp. 2004, § 51.1(B) or (C)]** years. If you find the defendant guilty of **[Crime Charged]** after 2 **[or more]** previous convictions, you shall return a verdict of guilty by marking the verdict form appropriately, fill in the appropriate space on the verdict form and return the verdict to the court. If you have a reasonable doubt of the defendant's guilt to the charge of **[Crime Charged]** after 2 **[or more]** previous convictions, you shall then consider whether the defendant is guilty of **[Crime Charged]** after 1 previous conviction.

The punishment for **[Crime Charged]** after 1 previous conviction is imprisonment in the State penitentiary for a term of **[Specify Term Provided in 21 O.S. 2001 & Supp. 2004, § 51.1(A), 51.1a, or 51.3]** years. If you find the defendant guilty of **[Crime Charged]** after 1 previous conviction, you shall return a verdict of guilty by marking the verdict form appropriately, fill in the appropriate space on the verdict form and return the verdict to the court. If you have a reasonable doubt of the defendant's guilt to the charge of **[Crime Charged]** after 1 previous conviction, you shall then determine the proper punishment for the crime of **[Crime Charged]** without regard to a previous conviction.

The crime of **[Crime Charged]** without a previous conviction is punishable by imprisonment in the State penitentiary for a term of **[State Range of Punishment]**.

When you have decided on the proper punishment, you shall fill in the appropriate space on the verdict form and return the verdict to the Court.

OUII-CR 10-21  
(2005 Supp.)

Evidence has been presented in the first stage of trial as to past criminal acts the defendant committed which is evidence of the defendant's propensity to commit crimes involving sexual misconduct. That evidence was proper for you to consider in determining the defendant's guilt.

In the second stage of trial, the court has determined as a matter of law that the sexual propensity evidence constitutes [specify number] alleged prior **conviction(s)** for your consideration in sentencing. **[Additionally, evidence has been presented of [specify number] alleged prior conviction(s).]** It remains the prosecution's burden to prove beyond a reasonable doubt the existence of each alleged prior conviction, and only those alleged prior convictions, proven to your satisfaction can be considered in determining punishment.

This Instruction should be given in the second stage of sentencing when prior convictions have been admitted during the first stage either after OUJI-CR 10-19, if the prior convictions are stipulated, or after OUJI-CR 10-21, if the prior convictions are contested,. In most cases, prior convictions are not admissible for proof of guilt, but they may be admissible to show propensity for sexual assault or child molestation under 12 O.S. 2011, §§ 2413, 2414. Under 21 O.S. 2011, § 51.1(B), prior convictions that arose out of the same transaction or occurrence or series of events closely related in time and location are to be counted as a single conviction for purposes of sentencing enhancement. If prior convictions arising out of the same transaction have not been admitted during the first stage, the trial court may count or list only the prior convictions that arose from separate transactions in OUJI-CR 10-17, 10-19, or 10-21, and this instruction should not be used. However, if the jury has already heard evidence of multiple prior convictions that arose from the same transaction, this instruction is needed in order to inform the jury that it is not to consider for sentencing purposes all of the prior convictions that were admitted during the first stage for proof of guilt.

The Oklahoma Court of Criminal Appeals observed in *Levering v. State*, 2013 OK CR 19, ¶ 7, 315 P.3d 392, 395, that it was not unusual for multiple charges and convictions to have arisen out of a transactionally related series of sex related offenses, and that transactionally related offenses may not be relied on for sentencing enhancement under 21 O.S. 2011, § 51.1(B). The Court of Criminal Appeals suggested the following instruction to explain the relationship between propensity evidence offered for guilt purposes and prior convictions used for sentencing enhancement:

Evidence has been presented in the first stage of trial as to past criminal acts the defendant committed against S.E. which is evidence of the defendant's propensity to commit crimes involving sex. That evidence was proper for you to consider in determining the defendant's guilt.

In the second stage of trial, the court has determined as a matter of law that the sexual propensity evidence constitutes one prior conviction for your consideration in sentencing. Additionally, evidence has been presented of two other prior convictions. It remains the prosecution's burden to prove beyond a reasonable doubt the existence of each alleged prior conviction, and only those prior convictions proven to your satisfaction can be considered in determining punishment.

*Levering v. State*, 2013 OK CR 19, ¶ 13, 315 P.3d 392, 396. This instruction is based on the suggested instruction in *Levering* with modifications to make it more generic.

OUJI-CR 10-21A  
(2014 Supp.)

THE STATE OF OKLAHOMA,

Plaintiff,

vs

JOHN DOE,

Defendant.

We, the jury, empaneled and sworn in the above-entitled cause, do, upon our oaths, find as follows:

Defendant is:

\_\_\_\_\_ Guilty of the crime of **[Crime Charged]** after two (2) [or more] previous convictions and  
fix punishment at \_\_\_\_\_.

\_\_\_\_\_ Guilty of the crime of **[Crime Charged]** after one (1) previous conviction and fix  
punishment at \_\_\_\_\_.

\_\_\_\_\_ Guilty of the crime of **[Crime Charged]** and fix punishment at  
\_\_\_\_\_.

\_\_\_\_\_  
FOREI

OUII-CR 10-22  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

You may find the defendant guilty of any offense, the commission of which is necessarily included in the **crime(s)** charged. You may also find the defendant guilty of an attempt to commit the charged crime or of an attempt to commit any included crime.

OUJI-CR 10-23  
(2000 Supp.)

The defendant is charged with **[Crime Charged In the Information/ Indictment]** You are instructed that, in addition to evidence concerning the crime of **[Crime Charged in the Information/Indictment]** evidence has also been introduced concerning the crime of **[Lesser Included Crime]** No person may be convicted of **[Lesser Included Crime]** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

If you have a reasonable doubt of the defendant's guilt of the charge of **[Crime Charged In the Information/Indictment]** you must then consider the charge of **[Lesser Included Crime]**.

[You are instructed that, in addition to the evidence concerning the crime of **[Crime Charged In the Information/Indictment]** evidence has been introduced concerning the crime of **[First Included Crime]** and evidence has also been introduced concerning the crime of **[Second Included Crime]**.

If you have a reasonable doubt of the defendant's guilt on the charges of **[List Crime Charged In the Information and First Included Crime]**, you must then consider the charge of **[Second Included Crime]**. No person may be convicted of **[Second Included Crime]** unless the State has proved beyond a reasonable doubt each element of the crime. These elements are: **[Give Elements of Second Included Offense.]**

You are not required to determine unanimously that the defendant is not guilty of the crime charged before you consider a lesser included offense. If you have a reasonable doubt as to which offense the defendant may be guilty of, you may find **him/her** guilty only of the lesser offense. if you have a reasonable doubt as to the guilt of the defendant on all such offenses, you must find **him/her** not guilty of any crime.

If you find the defendant guilty of any of the above named crimes, you shall then determine the proper punishment.

The crime of **[Crime Charged in the Information/Indictment]** is punishable by **[State Range of Punishment]**.

The crime of **[First Included Crime]** is punishable by **[State Range of Punishment]**.

The crime of **[Second Included Crime]** is punishable by **[State Range of Punishment]**.

When you have decided on the proper punishment, you shall fill in the appropriate space on the Verdict Form and return the verdict to the Court.

A Verdict Form for 2 Lesser Included Offenses is provided in OUJI-CR 10-25 below.

Former OUJI-CR 10-27 is incorporated into this instruction in order to avoid the problem that was notes by the Oklahoma Court of Criminal Appeals in *Graham v. State*, 2001 OK CR 18 , 27 P.3d 1026. In addition, the instruction clarifies that the jury does not have to unanimously acquit the defendant of the chraged offense before considering lesser included offenses.

The statute governing lesser included offenses is 22 O.S. 2001, § 916, which provides: "The jury may find the defendant guilty of any offenses, the commission of which is necessarily included in that with which he is charged, or of an attempt to commit the offense." In addition, 22 O.S. 2001, § 915 provides: "Whenever a crime is distinguished into degrees, the jury, if they convict the defendant, must find the degree of the crime of which he is guilty.

Over the years, the Oklahoma Court of Criminal Appeals has used a variety of approaches to determine which crimes are lesser included offenses of other crimes. *Shrum v. State*, 1999 OK CR 41, ¶ 7, 991 P.2d 1032 , 1035. In the *Shrum* case, the Oklahoma Court of Criminal Appeals formally adopted the evidence test to determine what constitutes a lesser included offense of a charged crime. Under the evidence test, the court looks to the evidence proved at trial in addition to the statutory elements of the crimes and the allegations in the indictment or information, to decide whether to give a jury instruction on a particular lesser included offense. *See also Childress v. State*, 2000 OK CR 10, ¶¶ 21-25, 1 P.3d 1006 (following *Shrum* in applying the evidence test). The Court provided the following direction to trial courts as to how to apply this test:



In practice, if the trial court sua sponte proposes the lesser included offense instruction that is supported by the evidence and the defendant objects, the defendant shall have the right to affirmatively waive any lesser included offense instruction that the evidence supports and proceed on an "all or nothing approach." [Citation omitted.] If the State requests the lesser included offense instruction and the defendant objects, the trial court should review the Information together with all material that was made available to the defendant at preliminary hearing and through discovery to determine whether the defendant received adequate notice that the State's case raised lesser related offenses that should be deemed included. [Footnote 9. If a witness' testimony materially changes at trial which gives rise to evidence of a lesser offense of which the defendant did not have notice, the State's requested instruction should be declined. To avoid such problems, prosecutors may elect to charge the accused in the alternative pursuant to 22 O.S.1991, § 404.] [Citation omitted.] However, if the trial court proposes or the State requests the lesser included offense instruction and the defense does not object, we will presume the defendant desired the lesser included offense instruction as a benefit.

*Shrum*, 1999 OK CR 41, ¶ 11, 991 P.2d at 1036-37.

Examples of the application of the evidence test are found in the *Shrum* and *Childress* cases, *supra*. The Court of Criminal Appeals ruled in the *Shrum* case that the trial court did not err in giving a jury instruction on first degree heat of passion manslaughter in a case where the defendant was charged with first degree malice murder and the defendant had not objected to the instruction at the trial. The Court of Criminal Appeals followed *Shrum* in *Childress v. State*, *supra*, where it ordered a new trial because the trial court refused to give instructions that the defendant had requested on a lesser related offense. The defendant in the *Childress* case was charged with first degree malice murder and larceny of a domestic animal. Although the elements of second degree felony murder are not contained in the elements of first degree malice murder, the Court of Criminal Appeals held that the defendant was entitled to an instruction on second degree felony murder because larceny of a domestic animal is a predicate felony for second degree felony murder, and there was sufficient evidence presented at trial to support an instruction for second degree felony murder. 2000 OK CR 10, ¶ 25, 1 P.3d at 1012-13.

In addition, if a crime is divided into degrees and the evidence at trial tends to prove a lesser degree of the crime than the charged crime, the jury should be instructed on the lesser degree of the crime. E.g., *Brown v. State*, 1983 OK CR 174, ¶ 6, 674 P.2d 46, 47.

OUJI-CR 10-24  
(2003 Supp.)

THE STATE OF OKLAHOMA,

Plaintiff,

vs

JOHN DOE,

Defendant.

We, the jury, empaneled and sworn in the above-entitled cause, do, upon our oaths, find as follows:

Defendant is:

OUII-CR 10-25  
(2000 Supp.)

You are instructed that, in addition to the submission of evidence concerning the **crime(s)** of **[Crime Charged In the Information/Indictment and Lesser Included Offenses]** you may find the defendant guilty of an attempt to commit **[List Appropriate Attempt(s)]**.

**[Give Appropriate Attempt Instructions, OUJI-CR 2-10 through OUJI-CR 2-15].**

OUJI-CR 10-26  
(2000 Supp.)

INSTRUCTION No. \_\_\_\_\_

This instruction is incorporated into OUJI-CR 10-24 in order to avoid the problem that was noted by the Oklahoma Court of Criminal Appeals in *Graham v. State*, 2001 OK CR 18, 27 P.2d 1026.

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OUJI-CR 10-27  
(2003 Supp.)

INSTRUCTION No. \_\_\_\_\_

It is now my duty, under the law, to give you the instructions that apply in this trial. The instructions contain all the law that you are to use in deciding this case, and also the rules of law you should follow in reaching a verdict. All the testimony and evidence, which is proper for you to consider, has been introduced in this case. You should not consider any matter of fact or law except what has been given you in open Court, while Court was in session.

You are the judges of the facts, and it is your duty to take the evidence and testimony that you heard in open Court in this case, to accept the law and rules in these instructions, and to apply this law and these rules to the evidence and testimony, and to decide the facts, and render a fair and impartial verdict, as you have sworn to do.

You are instructed that under the laws of the State of Oklahoma no person is subject to any criminal procedures unless he is presently "competent", as that term is defined in these instructions, nor is any person subject to any criminal procedures who is determined to be "incompetent", as that term is defined here.

**[Name of Defendant]** is a defendant in a criminal prosecution, and an application to determine **his/her** competency has been filed in that criminal prosecution. This trial has been held for you to determine several issues relating to **his/her** competency so that **his/her** capacity to **(stand trial)/(undergo further proceedings)** in the criminal case can be decided.

OUJI-CR 11-1

You are instructed that **[Name of Defendant]** is presumed by the law to be competent, as that term is defined in these instructions. The burden of proof rests upon **[Name of Defendant or, if applicable, the prosecution]** to prove to your satisfaction by a preponderance of the evidence that **[Name of Defendant]** is incompetent.

When I say that a party has the burden of proving any proposition by a preponderance of the evidence, I mean that you must be persuaded, considering all the evidence in the case, that the proposition on which such party has the burden of proof is more probably true than not true. The greater weight of the evidence does not mean the greater number of witnesses testifying to a fact, but means what seems to you more convincing and more probably true.

If you find that the greater weight of the evidence proves that **[Name of Defendant]** is incompetent, you should so state in your verdict.

On the other hand, if you do not so find, then you should return a verdict finding **[Name of Defendant]** to be competent.

OUII-CR 11-2

It is necessary that you understand what certain terms used in these instructions mean in the law. The following definitions apply here:

1. "Competent" or "competency" means the present ability of a person arrested for or charged with a crime to understand the nature of the charges and proceedings brought against **him/her** and to effectively and rationally assist in **his/her** defense.

2. "Dangerous" means:

(a) a person who poses a substantial risk of immediate physical harm to **himself/herself**, as shown by evidence of serious threats of or attempts at suicide or other significant self-inflicted bodily harm;

(b) a person who poses a substantial risk of immediate physical harm to another person or persons, as shown by evidence of violent behavior directed toward another person or persons;

(c) a person who placed another in a reasonable fear of violent behavior directed towards the other person or serious physical harm as shown by serious and immediate threats;

(d) there is a substantial risk that without immediate intervention severe impairment or injury will result to the person alleged to require treatment; or

(e) who poses a substantial risk of immediate serious physical injury or death to **himself/herself**, as shown by evidence that the person is unable to provide for and is not providing for the basic physical needs of the person and that appropriate provision for those needs cannot be made immediately available in the community; but

(f) a person who is homeless is not necessarily considered dangerous unless the person also meets the requirements just described.

3. "Incompetent" or "incompetency" means any person who is not presently competent. A person may be incompetent due to physical disability.

4. "Mentally retarded person" means a person who has significantly subaverage functioning, IQ of less than 70, manifested before age 18 and existing concurrently with related limitations in two or more of the following applicable adaptive skill areas:

1. Communication;

2. Self-care;

3. Home living;

4. Social skills;

5. Use of community resources;

6. Self-direction;

7. Health and safety;

8. Functional academics;

9. Leisure; and

10. Work.

5. "Person requiring treatment" means either:

- (1) A person who represents a risk of harm to self or others because of mental illness; or
- (2) A person who is a drug- or alcohol-dependent person and who represents a risk of harm to self or other as a result of drug dependency;

but a person requiring treatment is not:

- (1) a person whose mental processes have been weakened or impaired by reason of advanced years, dementia, or Alzheimer's disease,
- (2) a mentally retarded or developmentally disabled person,
- (3) a person with seizure disorder,
- (4) a person with a traumatic brain injury, or
- (5) a person who is homeless,

unless **he/she** also meets the other requirements just described.

6. A reasonable period of time for correction of incompetency through treatment, therapy or training for this particular case is **[Specify Applicable Period Time from 22 O.S.Supp. 2008 § 1175.1 ]**.

OUII-CR 11-3



INSTRUCTION No. \_\_\_\_\_

The loss of memory concerning events surrounding the crime, standing alone, is insufficient for proving incompetency.

OUII-CR 11-4

INSTRUCTION No. \_\_\_\_\_

In order for the Court to decide whether **[Name of Defendant]** should **(stand trial)/(undergo further proceedings)**, it is necessary that you answer the questions on the verdict form.

The first question on the verdict form that you must answer is, "Is **[Name of Defendant]** incompetent to undergo further criminal proceedings at this time?" If the answer is no, you need not answer the other questions, and you should sign and return the verdict as explained later in these instructions. If the answer is yes, then go to the other questions.

OUII-CR 11-5

The Court has made rulings in the conduct of the trial and the admission of evidence. In so doing the Court has not expressed nor intimated in any way the weight or credit to be given any evidence or testimony admitted during the trial, nor indicated in any way the conclusions to be reached by you in this case.

You are the judges of the facts, the weight of the evidence and the credibility of the witnesses. In determining such weight or credit you may consider: The interest, if any, which the witness may have in the result of the trial; the relation of the witness to the parties; the bias or prejudice, if any has been apparent; the candor, fairness, intelligence and demeanor of the witness; the ability of the witness to remember and relate past occurrences, and the means of observation, and opportunity of knowing the matters about which the witness has testified. From all the facts and circumstances appearing in evidence and coming to your observation during the trial, aided by the knowledge which you each possess in common with other persons, you will reach your conclusions. You should not let sympathy, sentiment or prejudice enter into your deliberations, but should discharge your duties as jurors impartially, conscientiously and faithfully under your oaths and return such verdict as the evidence warrants when measured by these instructions.

There has been introduced the testimony of witnesses who are represented to be skilled in certain areas. Such witnesses are known in law as expert witnesses. You may consider the testimony of these witnesses and give it such weight as you think it should have, but the value to be given their testimony is for you to determine. You are not required to surrender your own judgment to that of any person testifying as an expert or otherwise. The testimony of an expert, like that of any other witness, is to be given such value as you think it is entitled to receive.

These instructions contain all the law, whether statute or otherwise, to be applied by you in this case, and the rules by which you are to weight the evidence and determine the facts in issue. You must consider the instructions as a whole and not a part to the exclusion of the rest. You must not use any method of chance in arriving at a verdict, but base it on the judgment of each juror concurring there.

After you have retired to consider your verdict select one of the jury as a foreman and then enter upon your deliberations. If you all agree on the verdict in its entirety your foreman alone will sign it. If you do not all agree, but as many as five of you do, then those agreeing will sign the verdict individually. Notify the bailiff when you have a verdict so that you may return it in open Court. You will now listen to and consider the arguments of counsel which are a proper part of this trial.

OUJI-CR 11-6

INSTRUCTION No. \_\_\_\_\_

OUJI-CR 11-7

The purpose of these instructions is to outline your duties and what is expected of you during this grand jury investigation.

Under Article 2, Section 18, of the Oklahoma Constitution, a grand jury is convened by order of a District Judge after the filing of a proper Petition, as has been done in this case. **[Name of Judge]** has ordered the convening of this grand jury, and I have been appointed to conduct this grand jury. Your names were selected as provided by law. You have been summoned and impaneled and sworn to be a grand jury and to investigate the matters set forth in these instructions.

Now, you have been called by reason of the Grand Jury Petition, and that Grand Jury Petition requests that you investigate the following:

**[Describe the Primary Purpose of the Investigation.]**

However, you as grand jurors have the power to inquire into any matter to determine whether any crime or crimes have been committed, triable in **[Name of County]** County, for which indictments or accusations should be presented to the Court, as will be defined later in these instructions. To reiterate, however, the primary purpose for which you have been called is to **[Again Describe the Primary Purpose of the Investigation]**. You should make that your first order of business.

OUII-CR 12-1

A grand jury consists of twelve (12) persons. In addition to the twelve (12) grand jurors impaneled, three (3) additional persons have been selected as alternate grand jurors. The alternate grand jurors shall attend all sessions of the grand jury during its term and shall be subject to all laws governing grand jurors. However, no alternate grand juror shall participate in any deliberations of the grand jury until appointed by me to fill a vacancy.

When you retire to the jury room, you will first appoint one of you as clerk. It is the duty of the clerk to take minutes of your proceedings (except the votes of the individual members), record the names and addresses of witnesses who testify, and make an abstract of their testimony, and if an indictment is found, to show that at least nine (9) jurors, without naming them, voted a true bill.

The foreperson shall administer the following oath to any witness appearing before the grand jury:

Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

The Court has appointed [**Name of Court Reporter**], who is a qualified court reporter, to be present and take the testimony of all witnesses. The Court has also appointed a bailiff, [**Name of Bailiff**], to assist you as needed.

The **attorney(s)** for the State may appear before you to give information or advice concerning any matter before you and to examine the witnesses who may be called by you.

You may at all times ask the advice of the Court or the **attorney(s)** for the State. If you wish to communicate with the Court, you must return as a body into open court. No one can advise you, though, whether the evidence in a matter under investigation is sufficient or insufficient to return a true bill; this is a matter for your determination alone.

The **attorney(s)** for the State will issue subpoenas and other process to enforce the attendance of witnesses, and will draw up indictments and accusations when requested by the grand jury.

OUJI-CR 12-2

You have the power to inquire into all public offenses committed against the State that are triable in **[Name of County]** County, and to present them to the Court by Indictment or Accusation in writing. However, neither the convening nor the continuation of a grand jury dispenses with the right of the **attorney(s)** for the State to file Complaints and Informations, conduct preliminary hearings or other routine matters, unless otherwise specifically ordered by the Court convening the grand Jury.

You may, if you so desire, inspect any or all of the public institutions in **[Name of County]** County and make inquiry into their operation. You are entitled to examine, without charge, any of the public records in the County.

You are required to make a personal inspection of the condition of the County Jail, as to the sufficiency of the same for the safekeeping of prisoners, their convenient accommodation and health, and to inspect the rules and regulations of said Jail, and to make any recommendations that seem proper in your final report.

You are also required to make inquiry into the condition and management of the public prisons in the County, either by personal inspection or other means.

In addition, you are required to make inquiry into the case of every person imprisoned in the public jails within the County on a criminal charge who has not been indicted nor charged by complaint or information.

OUJI-CR 12-3

Each witness may be interrogated by any member of the jury and the **attorney(s)** for the State.

On the request of the accused, or on your own motion, you shall receive evidence for the accused.

While investigating a charge for the purpose of presenting an Indictment or Accusation, the grand jury may receive the written testimony of the witnesses taken in a preliminary examination of the same charge, and also the sworn testimony prepared by the **attorney(s)** for the State without bringing those witnesses before it. The grand jury may also hear evidence live from witnesses testifying before it and receive written evidence. The grand jury shall vote on each Indictment or Accusation separately.

It is your duty to weigh all of the evidence submitted to you and when you have reason to believe that there is other evidence, you may order it produced, and the **attorney(s)** for the State shall subpoena witnesses for your investigation.

If any member of the grand jury knows, or has reason to believe, that a public offense has been committed that is triable in the County, **he/she** must declare the same to the other jurors, and they must investigate it.

OUII-CR 12-4



INSTRUCTION No. \_\_\_\_\_

An "indictment" is a document charging a person with an offense under the laws of the State, presented to a court by a grand jury. When a document charges grounds for the removal of a public official from office, it is termed an "accusation."

The presentment of an Indictment or Accusation is a serious matter and it should not be found unless all of the evidence before you, when taken together, would in your judgment, if unexplained or uncontradicted, warrant a conviction by a trial jury.

An Indictment or Accusation cannot be found without agreement of at least nine (9) grand jurors. When so found, it must be endorsed "A True Bill," and signed by your foreperson.

The names of all the witnesses examined as to the facts in the particular Indictment or Accusation must appear on it.

An Indictment or Accusation, when found by the grand jury, must be presented to the Court by your foreperson in the presence of its members.

OUII-CR 12-5

INSTRUCTION No. \_\_\_\_\_

As a grand jury you have a duty to inquire into the willful and corrupt misconduct in office of public officers of every description in **[Name of County]** County or any of its subdivisions.

Any public officer, not subject to impeachment, whether elected or appointed to any governmental office under the laws of Oklahoma may be removed from office for any of the following causes:

FIRST: Habitual or willful neglect of duty.

SECOND: Gross partiality in office.

THIRD: Oppression in office.

FOURTH: Corruption in office.

FIFTH: Extortion or willful overcharge of fees in office.

SIXTH: Willful maladministration.

SEVENTH: Habitual drunkenness.

EIGHTH: Failure to produce and account for all public funds and property in his hands at any settlement or inspection authorized or required by law.

Any public officer may be removed or ousted from office for any act of commission or omission or neglect which may be committed, done or omitted during his present, or any previous or preceding term in such office.

An Accusation in writing, charging an officer with any of the causes for removal as stated above may be presented to the Court. In the case of a State officer, an Accusation may be presented when such officer resides or has his office for the usual transaction of business in **[Name of County]** County.

OUII-CR 12-6

INSTRUCTION No. \_\_\_\_\_

Every member of the grand jury must keep secret whatever was said or how any juror voted on any matter before it.

It is a criminal offense for a grand juror to disclose the testimony of a witness examined before the grand jury, except when required by the Court in a legal proceeding; or for a grand juror or other official to disclose that an Indictment for a felony has been presented until the Defendant's arrest.

You cannot be questioned for anything you say or any vote you give in the grand jury on any matter before the jury, except for perjury of a juror in making an Accusation or giving testimony to other jurors.

No one is allowed at your sessions except the members of the grand jury, the **attorney(s)** for the State, the Court Reporter, the witness actually under examination, one (1) attorney to advise such witness, when such witness so requests, and, when necessary, during the examination of a witness, an interpreter.

No one, except members of the grand jury, shall be permitted to be present during your deliberations or voting.

OUII-CR 12-7

INSTRUCTION No. \_\_\_\_\_

When you have completed your investigations, you may in your discretion, make a written report to the Court on the condition and operation of any public office or public institution that you investigated. You may make any recommendations concerning any matter investigated, but the report may not charge any public officer, or other person, with willful misconduct or malfeasance, nor reflect on the management of any public office as being willful and corrupt misconduct. Such matters may only be brought before the Court by Indictment or Accusation.

OUJI-CR 12-8

INSTRUCTION No. \_\_\_\_\_

No grand jury may be convened or remain in session during the period beginning thirty (30) days before a statewide primary, primary runoff, or general election and ending ten (10) days after the statewide primary, primary runoff, or general election. However, the grand jury may complete the matters presented to it and make its final report at any time before the legal time of adjournment for the particular grand jury.

OUII-CR 12-9

The Court admonishes you that it is your sworn duty to be fair and impartial in all your investigations, and you must present no person through malice, hatred or ill will, nor leave any unpresented through fear or affection, or for any reward or the promise or hope thereof, but in all presentments or Indictments it is your duty to present the truth, the whole truth and nothing but the truth according to the best of your skill and understanding.

After you have retired to the jury room, you will perform your duties as a separate and independent body, subject only to the natural supervisory powers of this Court and the instructions now given you, or which may be given you in open court later. You may hold your deliberations during whatever reasonable hours that seem proper, and may recess from time to time, as may be most suitable to the early completion of your duties; bearing in mind at all times the secrecy of the proceedings of the grand jury. I recommend to you that you keep the hours that closely accord with the usual hours of court at the **[Name of County]** County Courthouse, which are between the hours of 9:00 a.m. and 5:00 p.m. You are to keep the Court advised of your recess each day and the time you shall next convene. If you desire an extended recess, you should apply to the Court for permission.

The law requires that I appoint one of your number as foreperson of the grand jury, and accordingly, I will appoint **[Name of Foreperson]** to serve as your foreperson.

OUII-CR 12-10

INSTRUCTION No. \_\_\_\_\_

These instructions are for use in hearings to determine if a child is delinquent under the Oklahoma Juvenile Code, 10 O.S. Supp. 1996, §§ 7301-1.1 - 7307-1.8. Delinquency hearings are subject to a right to jury trial. 10 O.S. Supp. 1996, § 7303-4.1. The procedure for conducting delinquency hearings is found in 10 O.S. Supp. 1996, § 7303-4.2. The Court of Criminal Appeals has jurisdiction of appeals from juvenile delinquency proceedings. 10 O.S. Supp. 1996, § 7303-6.2.

The instructions in Part A are to be given at the beginning of trial and cover voir dire and other introductory matters. These instructions serve as a guide to the trial judge in questioning the jury panel prior to questioning by counsel. They need not be reduced to writing and distributed to the jury along with the other instructions in the case.

The instructions in Part B are to be given at the conclusion of the trial.

OUJI-CR 13

INSTRUCTION No. \_\_\_\_\_

For those who have been summoned as jurors, I remind you that jury service is a legal obligation as well as a civic duty. Each of you is an officer of the court just as the judge, the **attorney(s)** representing the prosecution, and the **attorney(s)** representing the defense. Your office as juror is one of extreme public trust. The services you perform as juror are as important and essential to the administration of justice as those performed by the judge and the attorneys.

As prospective jurors you will take an oath to answer completely and truthfully all questions asked you by myself and the attorneys.

OUII-CR 13-1



Do you, and each of you, solemnly **swear/affirm** to well and truly answer questions asked of you concerning your qualifications to sit as jurors in the case now on trial, **(so help you God?)/(this you do affirm under the penalties of perjury)?**

OUJI-CR 13-2

This jury trial is a special proceeding in which a **child/juvenile**, that is a person under the age of eighteen (18), is charged with committing a criminal offense. All cases of **children/juveniles** shall be heard separately from the trial of cases against adults, and these cases are subject to special rules of law. A six-person jury will be selected to hear this case in which the State of Oklahoma has filed a Petition alleging that a **child/juvenile** under the age of eighteen (18) has committed a criminal offense. The sole purpose of this proceeding is the determination by the jury of the status of the **child/juvenile** with reference to the question of whether or not **he/she** is a delinquent child. The jury shall determine this one question on the basis of whether or not the State proves to your satisfaction beyond a reasonable doubt each element of the criminal offense with which the **child/juvenile** is charged.

OUJI-CR 13-3

INSTRUCTION No. \_\_\_\_\_

**[Name of Child]** is charged with committing the offense of **[Name of Crime]** against **[Name the Alleged Victim(s)]**.

OUJI-CR 13-4

INSTRUCTION No. \_\_\_\_\_

Both the State of Oklahoma and the **[Name of Child]** are entitled to jurors who approach this case with open minds and agree to keep their minds open until a verdict is reached. Jurors must be as free as humanly possible from bias, prejudice, or sympathy. Jurors must not be influenced by preconceived ideas as to the facts or as to the law. You are undoubtedly qualified to serve as a juror but you may not be qualified to serve as a juror in this particular case. Hence, the law permits unlimited challenges for cause. Moreover, the law grants both the State and **[Name of Child]** three (3) peremptory challenges. A peremptory challenge permits either the State or **[Name of Child]** to excuse a prospective juror for any reason allowed by law. If you are excused from being a juror in this particular case, it is no reflection on you. You will may be chosen to serve as a juror in another case.

OUJI-CR 13-5

I will now ask you a number of questions to determine your qualifications to serve as jurors in this case. To determine your qualifications I will need to obtain information from each of you, including some personal information. The purpose of these questions is to obtain a fair jury and it is not to embarrass you. If any of my questions should touch on sensitive subjects that you do not want to have heard by everyone present, you should tell me, and you can then come forward so that we can discuss those matters privately.

1. Do you reside in **[Name of County]** County?
2. The **attorney(s)** for the State **is/are [Name the Attorney(s)]**. Do any of you know the **attorney(s)** for the State? Has the District Attorney's office handled any matter for any of you?
3. The **attorney(s)** for **[Name of Child]** **is/are [Name the Attorney(s)]**. Do any of you know the **attorney(s)** for **[Name of Child]**? **Has/Have** the **attorney(s)** for **[Name of Child]** **[or his/her law firm]** represented you on any legal matter?
4. Do any of you know **[Name of Child]**?
5. **Do/Did** any of you know **[Name the Alleged Victim(s)]**, or any member of **his/her/their** family?
6. The witnesses who may be called in this case are **[Name the Witness(es)]**: Do any of you know any of the witnesses, or any member of their families?
7. Have any of you read or heard the alleged facts of this case? Have you expressed or formed an opinion concerning this case? Would any information you have read or heard concerning this case influence your ability to hear or decide this case impartially? Have you discussed this case with anyone prior to today?
8. Have any of you had any experience that you feel might affect your consideration of this case?
9. Are you or is anyone in your immediate family employed or involved with a law enforcement agency or organization? Have you or has anyone in your immediate family been connected with law enforcement in the past? Do you hold or have you held a "Reserve Deputy Commission," a "Special Deputy Commission," or an "Honorary Deputy Commission"?
10. Have any of you ever been charged with or accused of a crime or a delinquent offense? Have any of your close friends or relatives ever been charged with or accused of a crime or a delinquent offense?
11. Have any of you ever been involved with the Department of Human Services or Juvenile Services?
12. Have any of you ever been victims of a crime? Have any of your close friends or relatives ever been victims of a crime?
13. I will instruct you on the law and the rules by which the jury reaches a verdict. Your duty as jurors is to accept and follow the law as included in the instructions and rules given to you by me. If selected as a juror, will each of you accept and follow the law as included in the instructions and rules that I will give to you?

One instruction I will give is that **[Name of Child]** is presumed innocent of the alleged offense, and the presumption continues unless after consideration of all the evidence you are convinced that **[Name of Child]** committed the offense beyond a reasonable doubt. The State has the burden of presenting the evidence that establishes the allegations of the petition beyond a reasonable doubt. **[Name of Child]** must be found not delinquent unless the State produces evidence which convinces you beyond a reasonable doubt of each element of the alleged offense. If selected as a juror, will each of you presume **[Name of Child]** innocent unless each element of the alleged offense is proven beyond a reasonable doubt?

14. Having been asked these questions, do any of you know at this time any reason why you could not be a fair and impartial juror? If so please raise your hand.

15. The court now requests that each of you give your name, your spouse's name if you are married, your occupation, your spouse's occupation, and the number of children you have. Please speak slowly and clearly. Let us begin with **[Note: Indicate the juror who is to begin.]**

OUJI-CR 13-6

INSTRUCTION No. \_\_\_\_\_

The attorneys for the State and **[Name of Child]** will now ask you questions. The questions are not designed to pry into your personal affairs but to discover if you have any information or opinions concerning this case which you cannot lay aside, or personal experiences in your life which might cause you to favor or disfavor the State or the defendant or persons who may be witnesses. The questions may further be designed to ascertain your attitude on social, religious and moral issues. These questions are necessary to assure the State and **[Name of Child]** an impartial jury.

The attorney for the State will proceed first.

OUII-CR 13-7

INSTRUCTION No. \_\_\_\_\_

Do you, and each of you, solemnly **swear/affirm** that you will well and truly try, and true deliverance make, of the issues submitted to you in the case now on trial, and a true verdict render, according to the law and evidence, **(so help you God?)/(this you do affirm under the penalties of perjury)?**

OUJI-CR 13-8



You have been selected and sworn as the jury to determine whether **[Name of Child]** is a delinquent child. The State alleges in the petition in this case that **[Name of Child]** is a delinquent child because **he/she** did on or about **[Date]** commit the offense of **[Name of Crime]** against **[Name of Victim]**.

The petition in this case is the formal method of accusing **[Name of Child]** of a delinquent act. The petition is not evidence and the law is that you should not allow yourselves to be influenced against **[Name of Child]** by reason of the filing of the petition.

**[Name of Child]** has denied the allegations in the petition. A denial puts in issue each element of the alleged offense with which **[Name of Child]** is charged, and a denial requires the State to prove each element of the alleged offense beyond a reasonable doubt.

**[Name of Child]** is presumed innocent of the alleged offense and the presumption continues unless after consideration of all the evidence you are convinced guilt that **[Name of Child]** committed the alleged offense beyond a reasonable doubt. The State has the burden of presenting the evidence that establishes that **[Name of Child]** committed the alleged offense beyond a reasonable doubt. **[Name of Child]** must be found not delinquent unless the State produces evidence which convinces you beyond a reasonable doubt of each element of the alleged offense.

Evidence is the testimony received from the **witness(es)** under oath, agreements as to fact made by the attorneys, and the exhibits admitted into evidence during the trial.

It is your responsibility as jurors to determine the facts from the evidence, to follow the law as stated in the instructions from the judge, and to reach a verdict of not delinquent or delinquent based upon the evidence. This is the only question for you to determine.

It is your responsibility as jurors to determine the credibility of each witness and the weight to be given the testimony of the witness. In order to make this determination, you may properly consider the overall reaction of the witness while testifying; **his/her** frankness or lack of frankness; **his/her** interest and bias, if any; the means and opportunity the witness had to know the facts about which **he/she** testifies; and the reasonableness or unreasonableness of **his/her** testimony in light of all the evidence in the case. You are not required to believe the testimony of any witness simply because **he/she** is under oath. You may believe or disbelieve all or part of the testimony of any witness. It is your duty to determine what testimony is worthy of belief and what testimony is not worthy of belief.

It is my responsibility as the judge to insure the evidence is presented according to the law, to instruct you as to the law, and to rule on objections raised by the attorneys. No statement or ruling by me is intended to indicate any opinion concerning the facts or evidence.

It is the responsibility of the attorneys to present evidence, to examine and cross-examine witnesses, and to argue the evidence. No statement or argument of the attorneys is evidence.

From time to time during the trial, the attorneys may raise objections. When an objection is made, you should not speculate on the reason why it is made. When an objection is approved or sustained by me, you should not speculate on what might have occurred or what might have been said had the objection not been sustained.

Throughout the trial you should remain alert and attentive. Do not form or express an opinion on the case until it is submitted to you for your decision. Do not discuss this case among yourselves until that time. Do not discuss this case with anyone else or permit anyone else to discuss this case in your presence. Do not talk to the attorneys, **[Name of Child]**, or the **witness(es)**. If anyone should attempt to discuss this case with you, report the incident to me or to the bailiff immediately. Do not read, or view or listen to any news report of this trial. This case must be decided solely upon the evidence presented to you in this court, free from any outside influence.

At this point in the trial, the attorney for the State reads the petition, announces the denial of **[Name of Child]**, and presents an opening statement. The attorney for **[Name of Child]** may present an opening statement after the attorney for the State, or may elect to reserve **his/her** opening statement until the conclusion of the evidence by the State. Opening statements are not evidence but serve as guides so that you may better understand and evaluate the evidence when it is presented.

Following the opening statements, witnesses are called to testify. Witnesses are sworn and then examined and cross-examined by the attorneys. Exhibits may also be introduced into evidence.

After the evidence is completed, I will instruct you on the law applicable to the case. The attorneys are then permitted closing arguments. Closing arguments are not evidence and are permitted for purposes of persuasion only.

When closing arguments are completed, the case will be submitted to you. You will then retire to consider your verdict.

The attorney for the State may now proceed.

OUII-CR 13-9

INSTRUCTION No. \_\_\_\_\_

Since all the evidence in this case has been given to you, it is now my duty, under the law, to give you the instructions that apply in this trial. The instructions contain all rules of the law that are to be applied by you in this case, and all the rules of law by which you are to weigh the evidence and determine the facts in issue in deciding this case and in reaching a verdict. You must consider the instructions as a whole and not as a part to the exclusion of the rest. All the testimony and evidence which it is proper for you to consider has been introduced in this case. You should not consider any matter of fact or of law except what has been given to you while this court is or has been in session.

OUII-CR 13-10

INSTRUCTION No. \_\_\_\_\_

It is your responsibility as jurors to determine the facts from the evidence, to follow the rules of law as stated in these instructions, and to reach a fair and impartial verdict of delinquent or not delinquent based upon the evidence, as you have sworn you would do. You must not use any method of chance in arriving at a verdict, but must base your verdict on the judgment of each juror.

OUII-CR 13-11

**[Name of Child]** is charged in the petition with committing the offense of **[State Offense Charged and Summarize Material Facts of Petition]** on or about **[Date]** in **[County]** County, Oklahoma.

**[Name of Child]** has denied the allegations in the petition.

OUJI-CR 13-12

INSTRUCTION No. \_\_\_\_\_

**[Name of Child]** is presumed innocent of the offense alleged against him/her, and the presumption continues unless, after consideration of all the evidence, you are convinced of every element of the offense beyond a reasonable doubt. The State has the burden of presenting the evidence that establishes every element of the offense beyond a reasonable doubt.

**[Name of Child]** must be found not delinquent unless the State produces evidence which convinces you beyond a reasonable doubt of each element of the offense.

OUJI-CR 13-13

INSTRUCTION No. \_\_\_\_\_

The term "delinquent child," as used in these instructions, means any person under the age of 18 years who has **[violated a (federal/state law)/(municipal ordinance)/(lawful order of the court pursuant to the Oklahoma Juvenile Code)]/[habitually violated traffic laws/ordinances]**.

The only question to be decided by you is whether or not **[Name of Child]** is delinquent. If you find **[Name of Child]** is delinquent, the Court will determine his/her treatment or placement. Do not let speculation about **his/her** treatment or placement influence your verdict.

OUII-CR 13-14

INSTRUCTION No. \_\_\_\_\_

It is a violation of a **(federal/state law)/(municipal ordinance)** to commit a/an **[Specify Crime, e.g., Assault and Battery]**. The elements of **[Specify Crime]** are: **[List Elements From Other Jury Instructions]**.

OUII-CR 13-15



INSTRUCTION No. \_\_\_\_\_

Evidence is the testimony received from the witnesses under oath, stipulations made by the attorneys, and the exhibits admitted into evidence during the trial.

OUII-CR 13-16

INSTRUCTION No. \_\_\_\_\_

The petition in this case is the formal method of accusing [**Name of Child**] of a delinquent act. The petition is not evidence, and the law is that you should not allow yourselves to be influenced against [**Name of Child**] by reason of the filing of the petition.

OUJI-CR 13-17

INSTRUCTION No. \_\_\_\_\_

The Court has made rulings in the conduct of the trial and the admission of evidence. In so doing I have not expressed nor intimated in any way the weight or credit to be given any evidence or testimony admitted during the trial. Nor have I indicated in any way the conclusions to be reached by you in this case.

OUJI-CR 13-18

INSTRUCTION No. \_\_\_\_\_

It is your responsibility to determine the credibility of each witness and the weight to be given the testimony of each witness. In determining such weight or credibility, you may properly consider: the interest, if any, which the witness may have in the result of the trial; the relation of the witness to the parties; the bias or prejudice of the witness, if any has been apparent; the candor, fairness, intelligence, and demeanor of the witness; the ability of the witness to remember and relate past occurrences, the means of observation, and the opportunity of knowing the matters about which the witness has testified. From all the facts and circumstances appearing in evidence and coming to your observation during the trial, aided by the knowledge which you each possess in common with other persons, you will reach your conclusions. You should not let sympathy, sentiment or prejudice enter into your deliberations, but should discharge your duties as jurors impartially, conscientiously, and faithfully under your oaths and return such verdict as the evidence warrants when measured by these instructions.

OUII-CR 13-19

INSTRUCTION No. \_\_\_\_\_

You are instructed that **[Name of Child]** is a competent witness. His/her testimony is to be judged in the same way as that of any other witness.

**[Name of Child]** is not compelled to testify, and the fact that **[Name of Child]** did not testify cannot be used as an inference that **[Name of Child]** committed a delinquent act and should not prejudice him in any way. You must not permit that fact to weigh in the slightest degree against **[Name of Child]**, nor should this fact enter your discussions or deliberations in any manner.

OUII-CR 13-20

INSTRUCTION No. \_\_\_\_\_

Testimony has been introduced of certain witnesses who purport to be skilled in their line of endeavor or who possess peculiar knowledge acquired by study, observation, and practice.

You may consider the testimony of these witnesses, and give it such weight and value as you think it should have, but the weight and value to be given their testimony is for you to determine. You are not required to surrender your own judgment to that of any person testifying, based on that person's education, training or experience. You need not give controlling effect to the opinion of such witnesses for their testimony, like that of any other witness, is to be received by you and given such weight and value as you deem it is entitled to receive.

OUII-CR 13-21

INSTRUCTION No. \_\_\_\_\_

You should consider only the evidence introduced while the court is in session. You are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified when considered with the aid of the knowledge which you each possess in common with other persons. You may make deductions and reach conclusions which reason and common sense lead you to draw from the fact which you find to have been established by the testimony and evidence in the case.

OUII-CR 13-22

"Direct evidence" is the testimony of a person who asserts actual, personal knowledge of a fact, such as the testimony of an eyewitness. "Direct evidence" may also be an exhibit such as a photograph which demonstrates the existence of a fact. It is proof which points immediately to a question at issue and which proves the existence of a fact without inference or presumption.

OUII-CR 13-23



"Circumstantial evidence" is the proof of facts or circumstances which gives rise to a reasonable inference of other connected facts that tend to show the guilt or innocence of a defendant. It is proof of a chain of facts and circumstances that indicates either guilt or innocence.

OUJI-CR 13-24

INSTRUCTION No. \_\_\_\_\_

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. Circumstantial evidence would be considered by you together with all the other evidence in the case in arriving at your verdict.

OUII-CR 13-25

INSTRUCTION No. \_\_\_\_\_

The State relies **[in part]** in its case upon circumstantial evidence. In order to warrant a verdict that **[Name of Child]** is a delinquent child upon circumstantial evidence, each fact necessary to prove every element of the alleged offense must be established by the evidence beyond a reasonable doubt. All of the facts and circumstances, taken together, must establish to your satisfaction beyond a reasonable doubt that **[Name of Child]** committed the alleged offense.

OUII-CR 13-26

INSTRUCTION No. \_\_\_\_\_

From time to time during this trial, the attorneys have made objections that I have ruled on. You should not speculate upon the reasons why objections were made. If I approved or sustained an objection, you should not speculate on what might have been said or what might have occurred had the objection not been sustained by me.

OUJI-CR 13-27

INSTRUCTION No. \_\_\_\_\_

After you have retired to consider your verdict, select one of your number as foreperson and enter upon your deliberations. When you have agreed on a verdict, your foreperson alone will sign it, and you will, as a body, return it in open court. Your verdict must be unanimous. Forms of verdict will be furnished. You will now listen to the argument of counsel, which is a proper part of this trial.

OUII-CR 13-28

INSTRUCTION No. \_\_\_\_\_

IN THE MATTER OF,

**[NAME OF CHILD].**

**[Name of Child] is:**

\_\_\_\_\_ Delinquent.

\_\_\_\_\_ Not Delinquent.

\_\_\_\_\_  
FOREPERSON

OUJI-CR 13-29

INSTRUCTION No. \_\_\_\_\_

You have now completed your duties as jurors in this case and are discharged. Since this proceeding has been conducted in private, you are not to discuss this case with anyone.

You have now completed your duties as jurors in this case and are discharged. The question may arise whether you are free to discuss this case with anyone. This is entirely your decision. If any person tries to discuss the case over your objection, or becomes critical of your service, please report it to me immediately.

OUII-CR 13-30